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TRIAL OF IMPEACHMENT

OF

LEVI HUBBELL,

JUDGE OF THE SECOND JUDICIAL CIRCUIT,

BY THE

SENATE OF THE STATE OF WISCONSIN,

JUNE 1853.

REPORTED BY T. C. LELAND.

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1853.

TRIAL OF IMPEACHMENT.

PRELIMINARY PROCEEDINGS.

On the 26th day of January, 1853, the following communication, addressed to the Speaker, was read in Assembly:

To Hon. Henry L. Palmer,
Speaker of the Assembly:

The undersigned, a citizen and elector of this State, hereby charges the Hon. Levi Hubbell, Judge of the Second Judicial Circuit of this State, with having committed, and being guilty of, high crimes, and misdemeanors, and malfeasances in office, and has so acted in his judicial capacity as to require the interposition of the Constitutional power of the Assembly. I therefore request you to lay this communication before your Honorable Body, so that an investigation may be had, to enable the Assembly to determine whether or not the constitutional power of the Assembly ought to be exercised in regard to the Hon. Levi Hubbell.

WM. K. WILSON.

After some discussion, it was referred to a select committee—Messrs. Simpson, Sanders, Cate, Sholes and E. N. Foster.

January 27—The Committee was, at the request of the chairman, authorized to send for persons and papers.

February 23—Mr. Simpson, chairman, reported from the Committee at length, with charges and specifications against Judge Hubbell, and recommending his removal from office "by address" of both Houses, as provided in the Constitution. The report was ordered printed.

February 28th, 29th, and March 2d and 3d, the Assembly had the report under consideration, and during this time the testimony taken by the Committee was read, in-secret session.

On March 3d, the Assembly resolved to proceed against the accused by Impeachment, instead of by Address, and Messrs. SANDERS, CATE, BARBER, SIMPSON and WHEELER, were appointed a Committee to prepare Articles of Impeachment, and to impeach LEVI HUBBELL at the bar of the Senate.

March 5—The Committee appeared at the bar of the Senate, and Mr. SANDERS, the chairman, read the following:

In the name of the Assembly, and all the people of the State, we impeach LEVI HUBBELL, Judge of the Second Judicial Circuit, of corrupt conduct and malfeasance in his said office; and the Assembly will, in due time, exhibit particular articles of impeachment against, and make good the same, and we do demand that the Senate take order for the appearance of the said LEVI HUBBELL to answer to the said impeachment.

(Signed) H. T. SANDERS,
G. W. CATE,
J ALLEN BARBER,
P. B. SIMPSON,
E. WHEELER,
Committee of the Assembly.

The subject was referred to a select committee of the Senate.

March 19—In Assembly, the Committee reported the Articles of Impeachment, being the same as the report of the Investigating Committee, with the exception that two specifications of the tenth charge were omitted.

March 20—Messrs. SANDERS, SIMPSON, BARBER, CATE and WHEELER, were chosen as the Assembly's Managers to conduct the Impeachment before the Senate.

March 22—The Senate having resolved itself into a Court for the trial of Impeachments, in the case of the STATE OF WISCONSIN *vs.* LEVI HUBBELL, Judge of the Second Judicial Circuit of said State, the Chief Clerk administered the following oath to the Hon. DUNCAN C. REED, the President *pro tempore.*

"You do solemnly swear that you will truly and impartially try the Impeachment of LEVI HUBBELL, Judge of the Second Judicial Circuit, according to evidence. So help you God."

The same oath was then administered by the President to the following Senators:

Messrs. ALDAN, ALLEN, BASHFORD, BLAIR, BOVEE, BOWEN, BRIGGS, CARY, DUNN, HUNTER, LEWIS, MILLER, PINCKNEY, PRENTICE, SHARPSTEIN, SQUIRES, STEWART, VITTUM, WAKELEY and WEIL.

The Managers on the part of the Assembly, viz: Messrs. SANDERS, BARBER, SIMPSON, CATE and WHEELER, then appeared within the bar of the Senate; and Mr. SANDERS, their Chairman, announced that they had been instructed by the Assembly to exhibit certain articles against LEVI HUBBELL, Judge of the Second Judicial Circuit of the State of Wisconsin, in maintenance and support of their Impeachment against him of corrupt conduct in office, and for crimes and misdemeanors.

Whereupon, the Sergeant-at-Arms made proclamation in the following words:

"Hear ye! Hear ye! Hear ye!

"All persons present are commanded to keep silence, on pain of imprisonment, while the Grand Inquest of the State are presenting to this Senate, Articles of Impeachment against LEVI HUBBELL, Judge of the Second Judicial Circuit of the State of Wisconsin."

Mr. SANDERS then read the following

ARTICLES OF IMPEACHMENT.

CHARGE I.

That he, the said Levi Hubbell, being judge of the second judicial circuit of this state, in the year 1852, while a certain cause wherein one Theodore Perry, survivor of Beville Shumway, was plaintiff, and Cicero Comstock, Leander Comstock, Reuben Chase, and William Sanderson, were defendants, was pending in the circuit court of Milwaukee county, before him, the said Levi Hubbell, as judge of the said court, did, contrary to his duty and obligations as said judge, permit the said William Sanderson, who was one of the defendants, and was interested and desirous that the said plaintiff should succeed in maintaining his said case, and recover therein, to consult and advise with him, the said Levi Hubbell, on the subject matter and proceedings of the said cause, and did con-

sult and advise with the said William Sanderson, in relation thereto; and that afterwards, in the month of June, in the same year, while he, the said Levi Hubbell, was holding under advisement, for his consideration and judgment, a certain issue of fact in the said cause, then lately tried before, and submitted to, him, pursuant to law and the practice of the said court, he, the said Levi Hubbell, did, privately and partially, and contrary to his said duty and obligations, reveal to the said William Sanderson that he, the said Levi Hubbell, as such judge, had decided upon the said issue, he, the said Levi Hubbell, did solicit and borrow from the said William Sanderson the sum of two hundred dollars, which sum the said William Sanderson, intending the same as a gift, thereupon paid to him, the said Levi Hubbell, taking no voucher, and making no agreement for the repayment thereof, and charging the same in account to the said plaintiff; and that, within two days thereafter, he, the said Levi Hubbell, did decide the said issue of fact in favor of the said plaintiff; and that the said sum of money so remained unpaid and unsecured by him, the said Levi Hubbell, and intended and regarded by the said William Sanderson as a gift, for a long time, and until after the said Levi Hubbell and William Sanderson, were advised that the said Levi Hubbell was threatened with prosecution before the constitutional tribunal, for receiving the said sum of money as a bribe; when he, the said Levi Hubbell, gave, and he, the said William Sanderson, received a due bill for the said sum of money, which he, the said Levi Hubbell, afterwards, and during the present session of the legislature of this state, pretended collusively with the said William Sanderson to pay to him, the said William Sanderson, but which said sum of money was not received by the said William Sanderson, but was by him left with the said Levi Hubbell, after the surrender by the said William Sanderson, to the said Levi Hubbell, of the said due bill, and so remains as a gift from the said William Sanderson, or the said plaintiff, in the hands, and to the use of him, the said Levi Hubbell, to the manifest corruption and scandal of the administration of justice.

CHARGE II.

That the said Levi Hubbell, so being judge of the second judicial circuit, has presided and adjudicated, as such judge, in the circuit courts of this state, in causes wherein he, the said Levi Hubbell, was pecuniarly interested, contrary to the statute in such case made and provided, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—That he, the said Levi Hubbell, having purchased from one Jonathan Taylor a certain judgment, previously rendered in the circuit court of Racine county, in favor of the said Jonathan Taylor, against the city of Milwaukee, and having procured the same to be assigned to one Levi Blossom, for the use and benefit of him, the said Levi Hubbell; and the said Levi Blossom having filed in the circuit court of Milwaukee county, his certain bill in chancery, commonly called a creditor's bill, founded upon the said judgment, and to enforce the payment of the said judgment against the said city, and having thereupon obtained a writ of injunction out of the said circuit court of Milwaukee county, restraining the said city, and the treasurer thereof, amongst other things, from paying out any monies belonging to the said city, and the said city having, by its counsel, made a motion in the said circuit court of Milwaukee county, to dissolve the said injunction; he, the said Levi Hubbell, judge as aforesaid, being pecuniarly interested in the premises, did, on the 12th day of February, 1852, contrary to law and justice, and his duty in the premises, preside in the said circuit court of Milwaukee county, on the hearing of the said motion, and as judge of the said court, did decide the said motion, and refuse the same.

SPECIFICATION 2.—That he, the said Levi Hubbell, being the owner of a certain promissory note of one Joseph O. Humble, did cause a suit to be instituted in the circuit court of Milwaukee county, wherein he, the said Levi Hubbell, was the presiding judge, for the collection of the said promissory note, for the use and benefit of him, the said Levi Hubbell, in the name of one Wallace W. Graham as plaintiff, against the said Joseph O. Humble, and that he, the said Levi Hubbell, Judge as aforesaid, being pecuniarly interested in the premises, did, on the 26th day of May, 1849, contrary to law and justice, and his duty in the premises, preside in the said court, in the said cause, and render judgment therein against the said Joseph O. Humble, and in favor of the said Wallace W. Graham.

SPECIFICATION 3.—That after the rendition of the judgment in the last foregoing specification mentioned, and a writ of *fieri facias* had issued thereon, and certain real estate of the said Joseph O. Humble had been sold to satisfy the same, and been purchased by one Henry P. Hubbell, for the use and benefit of him, the said Levi Hubbell; one William Y. Miller having filed his certain bill in chancery, in the circuit court of Milwaukee county, against the said Joseph O. Humble, the said Wallace W. Graham, and others, to foreclose a

mortgage on the said real estate, and having obtained thereupon a decree of foreclosure and sale of the said real estate, and said real estate having been, upon such last mentioned sale, again purchased by the said Henry P. Hubbell, for the use and benefit of him, the said Levi Hubbell; he, the said Levi Hubbell, being pecuniarily interested in the premises, did, at February term of the said court, 1851, as judge of the said court, make an order of the said court, confirming such last mentioned sale, and did, at a special April term of the said court, 1851, make an order of the said court directing the surplus monies arising from such last mentioned sale, to be paid to the said Henry P. Hubbell, as the purchaser of the said real estate.

CHARGE III.

That he, the said Levi Hubbell, so being judge of the second judicial circuit, has, in the circuit courts thereof, wilfully, arbitrarily, partially and illegally sentenced persons, therein convicted of crime, to punishments different from the punishment prescribed by law, contrary to the statutes in such case made and provided, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—That one James N. Haney having been indicted and convicted, in the circuit court of Dane county, for an assault with intent to commit murder, he, the said Levi Hubbell, as judge of the said Circuit court, did, on the 25th day of April, in the year 1851, contrary to law and justice and his duty in the premises, sentence the said James N. Haney, for the said crime, to pay a fine of two hundred dollars, and costs, and to stand commited until the same should be paid, and to no other or different punishment.

SPECIFICATION 2.—That one John McKay having been convicted in the circuit court of Waukesha county, on an indictment for larceny of goods and chattels, of the value of fifty dollars and upwards; he, the said Levi Hubbell, as judge of the said circuit court, did, on the 27th day of November, 1849, contrary to law and justice, and his duty in the premises, sentence the said John McKay, for the said crime, to pay a fine of five dollars, and costs, and to stand committed until the same should be paid, and to no other or different punishment.

CHARGE IV.

That he, the said Levi Hubbell, so being judge of the second judicial circuit, has presided and adjudicated, as such judge, in the circuit and supreme courts of this state, in causes in the subject matter whereof he, the said Levi Hubbell, had been retained and counselled with as attorney, solicitor, and counsellor, by parties to such causes, and had acted as attorney, solicitor, and counsellor for such parties, contrary to the statute in such case made and provided, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—That he, the said Levi Hubbell, at the December term, 1851, and the June term, 1852, of the Supreme Court of this State, did, contrary to law and justice and his duty in the premises, preside and adjudicate as one of the judges of the said supreme court, in a certain cause in Chancery, pending by appeal in the said Supreme court, wherein one Calvin W. Howe, and others were complainants, and one Charles I. Kane, who had been impleaded with one George Cogswell, was defendant, and did, as one of the judges of the said court, give his vote and influence in favor of the said Charles I. Kane, in the said cause; he, the said Levi Hubbell, having been the attorney, solicitor and counsel of the said Charles I. Kane, in the subject matter of the said cause, and in a former cause against the said Charles I. Kane, and George Cogswell, growing out of and involving the same facts.

SPECIFICATION 2.—That he, the said Levi Hubbell, having, as judge of the circuit court of Dane county, made a final decree in favor of William S Hungerford, in a certain cause in chancery therein pending, wherein the said William S. Hungerford was complainant, and Caleb Cushing was defendant, and while the said cause was pending, on an appeal of the said Caleb Cushing from the said decree to the supreme court of this state, he, the said Levi Hubbell, was contrary to his duty and obligations as such judge, retained, and did act as counsel for the said William S. Hungerford, in the District Court of the United States for the district of Wisconsin, growing out of the same controversy, and involving, in part, the same conclusions of fact and law as the said cause in chancery; and that afterwards, at the December term, 1851, and the June and December terms 1852, of the Supreme court, he, the said Levi Hubbell, did, contrary to law and justice, and his duty in the premises, preside and adjudicate as one of the judges of the said Supreme court, in the said

appeal of the said cause in chancery, and did, as one of the judges of the said court, give his vote and influence in the said cause, in favor of the said William S. Hungerford.

SPECIFICATION 3.—That he, the said Levi Hubbell, having been retained by one William L. Hart, to obtain for him, the said William L. Hart, a divorce from his wife Eliza A. Hart, who had never been within this state or the United States, and having made application for such divorce to the Hon. David Irvin, judge of the second judicial circuit of the territory of Wisconsin, in the district court for the county of Rock, in the said territory, which application had been refused by the said David Irwin, for want of jurisdiction of the courts of said territory to entertain the same; he the said Levi Hubbell, did, contrary to his duty and obligations as such judge, cause one Albert Smith, an attorney and counsellor, to be employed by the said William L. Hart, to apply for such divorce in the circuit court of Milwaukee county, before him, the said Levi Hubbell, as judge thereof, which was accordingly done; did entertain such cause in the said circuit court, as the judge thereof; did testify as a witness therein, to certain things by him done during and growing out of his said retainer by the said William L. Hart; and did, contrary to law and justice, and his duty in the premises preside in the said circuit court, on the hearing of the said divorce suit of the said William L. Hart against his wife, the said Eliza A. Hart, and did improvidently and improperly make a decree of the said circuit court, granting such divorce.

SPECIFICATION 4.—That he, the said Levi Hubbell, having been consulted and retained on behalf of one Andrew Smith, in relation to a certain claim of the said Andrew Smith against the Milwaukee Mutual Insurance Company, and the said Andrew Smith having instituted his suit against the said Insurance Company, in the circuit court of Milwaukee county; he, the said Levi Hubbell, did, at the February term of said court, 1850, contrary to law and justice, and his duty in the premises, preside at the trial of the said cause, as judge of the said court.

SPECIFICATION 5.—That he, the said Levi Hubbell, at the May term, 1851, of the circuit court of Milwaukee county, did, contrary to law and justice, and his duty in the premises, preside and adjudicate, as judge of the said court, upon a demurrer of one Charles I. Kane to a certain indictment therein pending, against the said Charles I. Kane, for the crime of perjury, and did sustain the said demurrer, and give judgment upon the said indictment in favor of the

said Charles I. Kane; he, the said Levi Hubbell, having been and acted as the attorney and counsel of the said Charles I. Kane, on the subject matter out of which the said indictment arose.

SPECIFICATION 6.—That he, the said Levi Hubbell, at the May term, 1852, of the circuit court of Milwaukee county, did, contrary to law and justice, and his duty in the premises, preside and adjudicate as judge of the said court, upon a demurrer of one Charles I. Kane to a certain other indictment therein pending, against the said Charles I. Kane, for the crime of perjury, and did sustain the said demurrer, and give judgment upon the said indictment in favor of the said Charles I. Kane, he, the said Levi Hubbell, having been and acted as the attorney and counsel of the said Charles I. Kane, on the subject matter out of which the said indictment arose, and having drawn the sworn answer in Chancery of the said Charles I. Kane, upon which perjury was assigned in and by the said indictment.

CHARGE V.

That he, the said Levi Hubbell, being judge of the second judicial circuit, has, contrary to the statute in such case made and provided, and his duty and obligations as such judge, taken and used moneys paid into the circuit courts of the said circuit, in the progress of suits therein, to the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—That he, the said Levi Hubbell, having, as judge of the circuit court of Milwaukee county, ordered the sale as of perishable property, of certain goods and chattels attached in a certain attachment cause, wherein James McBride, Henry McBride, and Henry K. Sheldon were plaintiffs, and Cicero Comstock, and Leander Comstock, William Sanderson, and Reuben Chase were defendants, then pending in the said circuit court, and the same having been so sold, and he, the said Levi Hubbell, having as such judge, ordered the nett proceeds of such sale to be paid into said court; he, the said Levi Hubbell, did, on the 14th day of August, 1852, contrary to law and propriety, and his duty in the premises, take from the sheriff of Milwaukee county, and use for his own benefit, the sum of five hundred and sixty-five dollars and seventy-four cents, being the amount returned by the said sheriff as the nett proceeds of the said sale, and did keep and use the same until after the final determination of the said cause.

SPECIFICATION 2.—That he, the said Levi Hubbell, having, as judge of the circuit court of Dane county, in a certain cause in chancery therein pending, wherein Levi B. Vilas, and Ezra L. Varney were complainants, and R. J. Lansing, Robert W. Lansing, Charles H. Rogers, Henry Corwith, and Nathan Corwith were defendants, ordered a certain amount of money, therein in controversy, to be paid into the said court, and thereupon the sum of two hundred and sixteen dollars and ninety-six cents was so paid in to the clerk of said court; he, the said Levi Hubbell, did, on the 23rd day of April, 1852, contrary to law and propriety, and his duty in the premises, take from the said clerk, and use for his own benefit, the sum of two hundred and fifteen dollars, being part of the amount paid into court, and did keep and use the same until after the final determination of the said cause.

SPECIFICATION 3.—That he, the said Levi Hubbell, having, as judge of the circuit court of Milwaukee county, at the January term, 1850, thereof, sentenced certain persons convicted of misdemeanors, in said court, to wit: Samuel Gardiner, Rufus King, William J. A. Fuller, and William E. Cramer, to pay certain fines, did, contrary to law, and his duty in the premises, take and receive, and for a long time keep and use, to his own use, the moneys by them paid for such fines.

CHARGE VI.

That he, the said Levi Hubbell, so being judge of the second judicial circuit, has improperly and collusively given judicial advice, and made judicial promises, to suitors and persons likely to become suitors in the courts of this state, on the subject matter of their suits, contrary to law, and his duty as such judge, and to the manifest scandal and partiality of the administration of justice.

SPECIFICATION 1.—That while a certain cause in chancery, instituted by the Attorney General on behalf of this state, against the Wisconsin Marine and Fire Insurance Company, and one Alexander Mitchell, the secretary thereof, was pending in the circuit court of Washington county, wherein the said Attorney General had applied to the said circuit court for a wrt of injunction against the defendant therein; he, the said Levi Hubbell, did, contrary to his duty and obligations as said judge, confer with the said Alexander Mitchell to obey any injunction in the said cause, if such should be issued by the said circuit court, he, the said Levi Hubbell, as judge of the second judicial circuit, would dissolve the same.

SPECIFICATION 2.—That a certain judgment having been recovered in the circuit court of Milwaukee county, by John Lowery and Archibald Lowery, against James P. Greves and Abel W. Wright, he, the said Levi Hubbell, being judge of the said circuit court, did, contrary to his duty and obligations as such judge, listen to the complaints and statements of the said James P. Greves, in relation thereto, and did express to the said James P. Greves an opinion that the said judgment was scandalously obtained, and did advise the said James P. Greves to make a motion to vacate the said judgment in the said court, before him, the said Levi Hubbell, as judge thereof, which the said James P. Greves, on such advice, accordingly did.

SPECIFICATION 3.—That one Burr S. Craft being desirous of obtaining a divorce from his wife, he, the said Levi Hubbell, did, contrary to judicial propriety and duty, permit and solicit one Andrew E. Elmore, the friend and agent of the said Burr S. Craft, to relate to him, the said Levi Hubbell, the grounds and facts on which said Burr S. Craft sought such divorce, and thereupon did, contrary to his duty and obligations as such judge, advise the said Andrew E. Elmore, that such grounds and facts were sufficient to obtain such divorce, and did advise the said Andrew E. Elmore, on behalf of the said Burr S. Craft, to apply for such divorce; and a bill or petition for such divorce upon such advice, filed on behalf of the said Burr S. Craft, in the circuit court of Waukesha county; the said Levi Hubbell did, contrary to his duty and obligations as a judge, permit the said Andrew E. Elmore, to exhibit in private to him, the said Levi Hubbell, the evidence taken in support of such divorce, for the purpose of taking his, the said Levi Hubbell's opinion on the sufficiency of such evidence, and did thereupon privately advise the said Andrew E. Elmore that such evidence was sufficient for that purpose: and did afterwards, as judge of the said circuit court, make a decree of the said court granting such divorce; and did afterwards solicit a present from the said Burr S. Craft, through the said Andrew E. Elmore.

CHARGE VII.

That the said Levi Hubbell, so being judge of the second judicial circuit, has, in the exercise of his judicial functions, conducted himself with undue and unjust partiality and favor to particular suitors in the courts of the said circuit before him, contrary to his duty and obligation as such judge, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—That the said Levi Hubbell being applied to, as judge of the Milwaukee circuit court, to hold a special term of said court, for the purpose of confirming a sale made in a certain foreclosure cause in chancery, pending in the said court, wherein John F. Baasen was complainant, and John Anderson and others were defendants, and having agreed to hold such special term for such purpose; afterwards, contrary to his duty and obligations as such judge, did partially, and from his personal feeling of enmity, refuse to hold the same for the benefit of one Byron Kilbourn, because the said Byron Kilbourn was his, the said Levi Hubbell's, opponent; and afterwards, contrary to his duty did partially, and of his personal favor, agree to hold the same for the benefit of one Amos Sawyer, because the said Amos Sawyer was his, the said Levi Hubbell's, friend.

SPECIFICATION 2.—That while an indictment was depending in the circuit court of Waukesha county against one William H. Howe, for the crime of perjury, he, the said Levi Hubbell, had, contrary to public decency, and against his duty and obligations as such judge, a private and indecent interview with the wife of the said William H. Howe, sought by her to solicit, and wherein she did solicit him, on behalf of her said husband, in the matter of said indictment; and did afterwards, as judge of the said court, bring about the acquittal of the said William H. Howe of the crime charged by the said indictment.

SPECIFICATION 3.—That he, the said Levi Hubbell, judge as aforesaid, knowing that one Eliza C. Wyman, the wife of one William W. Wyman, was living apart from her said husband, and was desirous of obtaining a divorce from him, had, contrary to public decency, and his duty and obligations as a judge, a private and indecent interview with her, and in such interview did counsel and advise with her, in relation to such divorce; and that he, the said Levi Hubbell did afterwards permit the said William W. Wyman, who was also solicitous to obtain a divorce from his said wife, to exhibit affidavits to him in support of such divorce and did thereupon advise the said William W. Wyman that such affidavits did not establish grounds for a divorce, but that he, he said William W. Wyman, could accomplish his end by permitting his said wife to obtain such divorce; to which said William W. Wyman assented, informing him, the said Levi Hubbell, that he, the said William W. Wyman, would suffer his wife to obtain such divorce; and that afterwards he, the said Levi Hubbell, well knowing such collusion between the said William W. Wyman and his said wife, did, as judge of the circuit court of Jefferson

county, by collusion and favor, and contrary to law and justice, and without justifiable cause, and against his duty and obligations, make a decree of the said court granting a divorce against the said William W. Wyman, in favor of his said wife.

SPECIFICATION 4.—That in a certain cause in the circuit court of Waukesha county, wherein Robert Barker was plaintiff, and George C. Pratt was defendant, he, the said Levi Hubbell, as judge of said court, did by collusion and favor, contrary to law and justice, without justifiable cause, and against his duty and obligations as such judge, make an order of the said court to stay until the further order of the said court, any writ of execution on a certain judgment rendered in the said cause, in favor of the said plaintiff, and against the said defendant, because it was inconvenient and difficult for the said defendant then to pay such judgment.

SPECIFICATION 5.—The same as the third specification to the sixth charge.

SPECIFICATION 6.—The same as the first specification to the sixth charge.

SPECIFICATION 7.—That the said Levi Hubbell, on the trial in the circuit court of Milwaukee county, of a certain cause wherein Ira A. Hopkins was plaintiff, and Horatio N. Stevens was defendant, did at the May term of the said court, 1851, contrary to his duty and obligations as such judge, partially and unfairly attempt to prevent the counsel for the said plaintiff from adhering to an admission of fact made by such counsel, and from making the same.

SPECIFICATION 3.—That he, the said Levi Hubbell, as judge of the circuit court of Dane county, insisted upon hearing a certain cause in chancery pending in the said court, wherein William S. Hungerford was complainant, and Caleb Cushing was defendant, at a special term of the said court, to be held by him for that purpose, and arbitrarily and partially refused the counsel of the said defendant adequate time for the argument of said cause.

CHARGE VIII.

That he, the said Levi Hubbell, so being judge of the second judicial circuit has used his judicial station and influence for the purpose of inducing females to submit themselves to be debauched by him, contrary to public decency, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—In the case of Mrs. Howe, set forth in the 2d specification to the 7th charge.

SPECIFICATION 2.—In the case of Mrs. Wyman, set forth in the 3d specification to the 7th charge.

SPECIFICATION 3.—In the case of Mrs. J. Van Bergen, in relation to an application by her to the circuit court of Dane county, for leave to sell the real estate of her late husband, William Van Bergen.

SPECIFICATION 4.—In the case of Mrs. Sarah Pope, in relation to her application for a divorce from her husband to the circuit court of Milwaukee county.

CHARGE IX.

That the said Levi Hubbell, so being judge of the second judicial circuit has arbitrarily and oppressively exercised the functions of his judicial office, of his own mere will, and out of favor or enmity, to the oppression of suitors, and the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—By ordering a new trial without sufficient cause, and without argument heard by him in court, in the case of George Trentledge against the Milwaukee and Mississippi rail road company, in the Milwaukee circuit court.

SPECIFICATION 2.—By refusing adequate time for the argument by counsel of the cause of William S. Hungerford against Caleb Cushing, in the circuit court of Dane county.

SPECIFICATION 3.—By staying execution, without sufficient cause, in the case of Robert Barker against George C. Pratt, in the circuit court of Waukesha county.

SPECIFICATION 4.—By enacting the excessive and unreasonable penalty of ten thousand dollars in an appeal bond, on an interlocutory appeal by the defendant to the supreme court, in the case of William S. Hungerford against Caleb Cushing, in the circuit court of Dane county.

SPECIFICATION 5.—By quashing the indictment in the case of the State against John Lane and Gilbert Lane, without proper cause, in the circuit court of Jefferson county, after having previously refused to quash the same.

SPECIFICATION 6.—By himself giving notice to the complainant's counsel of a motion to dissolve the injunction in the case of Michael McGrath against William Cook, in the circuit court of Milwaukee county, and forcing such motion to a hearing, and deciding the same against the complainant without

reasonable cause, and without any such motion having been made or noticed by the defendant in the cause, and after having previously refused, in the same state of the said cause, to dissolve the said injunction.

CHARGE X.

That he, the said Levi Hubbell, so being judge of the second judicial circuit, has, contrary to his duty and obligation as such judge, allowed himself to be improperly approached, consulted, advised with, and influenced, out of court, on the subject of suits and proceedings instituted, or about to be instituted, in the circuit courts of the said circuit, by suitors, their friends and agents, to the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—The same as the third specification to the 8th charge.

SPECIFICATION 2.—In the case of George Trentledge against the Milwaukee and Mississippi railroad company, in the circuit court of Milwaukee county, by James Kneeland.

SPECIFICATION 3.—In case of John Lowery and Archibald Lowery against James P. Greves and Abel W. Wright, in the circuit court of Milwaukee county, by James P. Greves.

SPECIFICATION 4.—In case of Isaac N. Janes against Samuel B. Humphrey, in the circuit court of Milwaukee county, by Mrs. Julia N. Janes.

SPECIFICATION 5.—In the case of Peter G. Jones against Horatio N. Davis, in the circuit court of Waukesha county, by A. F. Pratt and William A. Barstow.

SPECIFICATION 6.—In the case of George F. Pratt against ——— Cleveland, in the circuit court of Waukesha county, by A. F. Pratt.

SPECIFICATION 7.—In case of Luther Ayer against George C. Pratt, in the circuit court of Milwaukee county, by A. F. Pratt.

SPECIFICATION 8.—In the case of the State against William H. Howe, in the circuit court of Waukesha county, by Mrs. Howe.

SPECIFICATION 9.—In divers cases, the titles whereof are unknown, by Wm. A. Barstow.

SPECIFICATION 10.—In the case of William A. Barstow, administrator of Josiah Barber, against Horatio N. Wall, in the circuit court of Waukesha county, by William A. Barstow.

SPECIFICATION 11.—In the case of the State against John L. Doran, in the circuit court of Milwaukee county, by John L. Doran.

SPECIFICATION 12.—In the divorce suit of Mrs. Sarah Pope, in the circuit court of Milwaukee county, by Mrs. Sarah Pope.

SPECIFICATION 13.—In the case of the Board of Supervisors of Milwaukee county, against Sylvester W. Dunbar, Geoage D. Dousman and others, in the circuit court of Milwaukee county, by George D. Dousman.

SPECIFICATION 14.—In the case of the State against Jehiel Smith, in the circuit court of Milwaukee county, by Peter G. Jones and others.

SPECIFICATION 15.—In the divorce case of Burr S. Craft against —— Craft, his wife, in the circuit court of Waukesha county, by Andrew E. Elmore.

SPECIFICATION 16.—In the case of the United States against John McKay, in the circuit court of Waukesha county, by Andrew E. Elmore.

SPECIFICATION 17.—In the case of the State against James N. Haney, in the circuit court of Dane county, by George P. Thompson.

SPECIFICATION 18.—In the divorce case of William W. Wyman, against Eliza C. Wyman, his wife, in the circuit court of Jefferson county, by both the parties to the suit.

SPECIFICATION 19.—In the case of the State against John Lane and Gilbert Lane, in the circuit court of Jefferson county, by Jonathan E. Arnold, the defendants' attorney.

SPECIFICATION 20.—In the case of Theodore Perry, survivor of Beville Shumway, against Cicero Comsrock, Leander Comstock, Reuben Chase and Wm. Sanderson, in the circuit court of Milwaukee county, by Wm. Sanderson.

SPECIFICATION 21.—In the case of Lemuel White against J. H. Martin, in the circuit court of Waukesha county, by Calvert C. White.

CHARGE XI.

That the said Levi Hubbell, so being judge of the second judicial circuit, has, contrary to his duty and obligation as such judge, officiously interfered and intermeddled with, and advised upon the subject matter of suits instituted, or about to be instituted, in the circuit and supreme courts of this state, with suitors, their friends or agents, to the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—In the case of George Trentledge against the Milwaukee and Mississippi railroad company, in the the circuit court of Milwaukee county, with James Kneeland.

SPECIFICATION 2.—With Mrs. Jane Van Bergen, in relation to selling the real estate of her deceased husband.

SPECIFICATION 3 —In the case of John Lowery and Archibald Lowery against James P. Greves and Abel W. Wright, in the circuit court of Milwaukee county, with James P. Greves.

SPECIFICATION 4.—In the case of James Kneeland against the City of Milwaukee, in the circuit court of Milwaukee county, with Asahel Finch, junior.

SPECIFICATION 5.—In the case of the Attorney General against the Wisconsin Marine and Fire Insurance Company, in the circuit court of Washington county, with Alexander Mitchell.

SPECIFICATION 6.—In the case of William A. Barstow, administrator of Josiah Barber, against Horatio N. Wall, in the circuit court of Waukesha county, with William A. Barstow.

SPECIFICATION 7.—In the case of Mason Converse against Peter Rogan, in the circuit court of Milwaukee county, with Peter Rogan.

SPECIFICATION 8.—In the case of James McBride and Joseph Lord against Russell Wheeler, in the circuit court of Milwaukee county, with Francis Randall, plaintiffs' attorney.

SPECIFICATION 9.—In the case of John C. Treadwell, and others against Charles J. Richards, in the circuit court of Milwaukee county, by improperly entering the jury room alone, and then discharging the jury privately.

SPECIFICATION 10.—In the case of the State against Jehiel Smith, in the circuit court of Milwaukee county, with A. Cook, prosecuting attorney.

SPECIFICATION 11.—In the divorce case of Burr S. Craft against ——— Craft, his wife, in the circuit court of Waukesha county, with Andrew E. Elmore.

SPECIFICATION 12.—In the case of William L. Hart against Eliza A. Hart, in the circuit court of Milwaukee county, with Albert Smith.

SPECIFICATION 13.—In the matter of an application to the said Levi Hubbell, for an injunction against the Milwaukee and Mississippi Railroad Company, with James Kneeland, a director of the said company.

COURT FOR THE TRIAL OF IMPEACHMENTS.

LEVI HUBBELL, *ads.* STATE OF WISCONSIN.

FILED MAY 2, 1353.

JOHN K. WILLIAMS, *Chief Clerk Senate.*

PLEA.

And the said Levi Hubbell, Judge of the Second Judicial Circuit of the State of Wisconsin, by his Attorneys J. E. Arnold and James H. Knowlton, Esquires, comes here into Court, and praying leave of the Court to save and reserve to himself, the same right of objection to all or any of the foregoing Charges and Specifications against him preferred by the Honorable the Assembly of the State, which he might or would have in case a demurrer to the same were here filed, and not confessing or admitting eitheir the Constitutional right of the Honorable the Assembly in the premises, or the sufficiency in law of any of the said Charges and Specifications for the purposes intended, says, he is not guilty of the said supposed acts of corrupt conduct and malfeasance in office, or any of them, above laid to his charge, in manner and form as the Honorable the Assembly hath above thereof, in and by the said Charges and Specifications complained against him.

LEVI HUBBELL,
Judge of the Second Judicial Circuit.

By his Attorneys,

J. E. ARNOLD, and
JAMES H. KNOWLTON.

RULES OF THE COURT FOR THE TRIAL OF IMPEACHMENT.

The Committee appointed under a resolution of the Senate, to arrange and report Rules of proceeding in cases of *Impeachment*, having considered the subject referred, respectfully report the following *Rules:*—

1. Whensoever the Senate shall receive notice from the Assembly that managers are appointed on their part to conduct an Impeachment against any person, and are directed to carry such articles of Impeachment to the senate, the chief clerk of the senate shall immediately inform the assembly, that the senate is ready to receive the managers for the purpose of exhibiting such articles of Impeachment, agreeably to the said notice.

2. When the managers of an impeachment shall be introduced to the bar of the senate, and shall signify that they are ready to exhibit articles of Impeachment against any person, the president of the senate shall direct the sergeant-at-arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence on pain of imprisonment, while the Grand Inquest of the State of Wisconsin is exhibiting to the Senate of the State Articles of Impeachment against ———; after which, the articles shall be exhibited, and then the president of the senate shall inform the managers that the senate will take proper order on the subject of the Impeachment, of which due notice shall be given to the Assembly.

3. A summons shall issue, directed to the person impeached, in the following form:

"The State of Wisconsin, ss.

The Senate of the State of Wisconsin, to ———, Greeting:

Whereas, the Assembly of the State of Wisconsin did, on the 22nd day of March, inst., exhibit to the Senate, Articles of Impeachment against you, the said ———, in the words following:

[Here insert the Articles.]

And did demand that you, the said ———, should be put to answer the accusations as set forth in said Articles, and that such proceedings, examina-

tions, trials and judgments, might be thereupon had as agreeable to law and justice: You, the said ———, are therefore hereby summoned to be and appear before the Senate of the State of Wisconsin, at their Chamber in Madison, on the 6th [Monday] day of June next, then and there to answer to the said Articles of Impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the State shall make in the premises, according to the constitution and laws of the State of Wisconsin. Hereof you are not to fail.

WITNESS ———, Lieutenant Governor of the State of Wisconsin, and President of the Senate thereof, at Madison, this — day of ——, in the year of our Lord ——, and of the Independence of the United States the ——."

Which summons shall be signed by the chief clerk of the senate, (and sealed with their seals, and served by the sergeant-at-arms to the senate,) or by such other persons as the Senate shall specially appoint for that purpose, who shall serve the same pursuant to the directions given in the form next following.

4. A precept shall be endorsed on said writ of summons in the form following:

"STATE OF WISCONSIN, ss.

The Senate of the State of Wisconsin, to ———, Greeting:

You are hereby commanded to deliver to, and leave with ———, if to be found, a true and attested copy of the within writ of summons, together with a copy of this precept, showing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence, and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in said writ of summons. Fail not; and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

WITNESS ——, Lieutenant Governor of the State of Wisconsin, and President of the Senate thereof, at Madison, this — day of ——, in the year of our Lord ——, and of the Independence of the United States the ——."

Which precept shall be signed by the chief clerk of the Senate and sealed with their seal.

5. Subpœnas shall be issued by the chief clerk of the Senate, upon the application of the managers of the impeachment, or of the party impeached, or

of his counsel, returnable on the return day of the said writ of summons provided in the third rule, is issued before said return day, and if issued after, to be made returnable, at such time during the progress of the trial, as the said managers or party impeached may designate. A subpœna issued as herein provided, shall be in the form following:

"STATE OF WISCONSIN, ss.

The Senate of the State of Wisconsin, to ———, Greeting:

You and each of you are hereby commanded to appear before the Senate of the State of Wisconsin, on the — day of ——, at the Senate Chamber, in Madison, then and there to testify your knowledge in the cause which is before the Senate, in which the Assembly have impeached ———. Fail not.

WITNESS ———, Lieutenant Governor of the State of Wisconsin, and President of the Senate thereof, at Madison, this — day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——."

Which shall be signed by the chief clerk of the senate, and sealed with their seal, which subpœnas shall be directed, in every case to ———, to serve and return.

6. The form of direction to the ———, for service of a subpœna, shall be as follows:

"STATE OF WISCONSIN, ss.

To the Sergeant-at-Arms of the Senate:

You are hereby commanded to serve and return the within subpœna according to law. Dated at Madison, this — day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——

——— Chief Clerk of the Senate."

7. The President of the Senate shall direct all necessary preparation in the Senate Chamber, and all the forms of proceeding while the Senate are sitting for the purpose of trying an Impeachment, and all forms, during the trial, not otherwise specially provided for by the Senate.

8. He shall be authorized to direct the employment of assistants to the Sergeant-at-Arms, or any other persons during the trial, to discharge such duties as may be prescribed by him.

9. At 12 o'clock of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the

PROCEEDINGS OF COURT OF IMPEACHMENT.

FIRST DAY.

MONDAY, June 6, 1853.

The Court met and organized at 12 o'clock on Monday, June 6th, 1853. Hon. D. C. Reed, President, in the chair.

After the organization, Mr. James B. Knowlton arose and said: As one of the counsel for Levi Hubbell, I announce to the Court that he is present and ready for the trial. I will state, however, that it is the desire of Judge Hubbell, and of his counsel, that the Senate should be full—at least I speak for myself when I say that it is the desire of his counsel. Mr. Arnold, my colleague, is not present; but I have no doubt I shadow forth his views when I state that he also is desirous of having a full Senate before proceeding.

Senator Dunn concurred in the view of the counsel. He said: I think it is due by the Court to Judge Hubbell, that he should have a full Senate if he desire it; and I think also, that, as this tribunal is to try one of the highest representatives of the Judicial Department of the State, the Senate and Court should be full; and entertaining this opinion, and, as I understand the counsel that it is the wish of the Judge also that it should be full, I move that this Court adjourn till noon to-morrow; and that the President take such measures to fill this Court, as he may think proper under the circumstances.

The Court adopted the motion and adjourned till 12 o'clock on Tuesday.

SECOND DAY.

TUESDAY, June 7, 1853.

The Court opened this day, at 12 o'clock, according to adjournment yesterday. On calling the roll, three Senators—Wakeley, Blair and Stewart—were found absent.

Senator Lewis said: Mr. President, unless the defendant wishes to make a motion, I move that the Court adjourn till to-morrow morning at ten o'clock. I make this motion for the reason that in the Assembly, there is not yet a quorum, and also that the Senate is not full.

Mr. Knowlton announced that the defence had no motion to submit.

The Court adopted the motion.

The Senate then adjourned to 9¾ o'clock to-morrow.

THIRD DAY.

WEDNESDAY, June 8th, 1853.

At 10 o'clock, the Court was opened by the usual proclamation.

On calling the roll, every member comprising the Senate, responded to his name.

Mr. Dunn then moved, that, under the 12th rule, prescribed for conducting the Impeachment, the Chief Clerk be directed to give notice to the Assembly, that the Senate is now ready to proceed upon the Impeachment.

The motion was adopted.

The Board of Managers came at five minutes to 11 o'clock.

Mr. Sanders, on the part of the Managers, asked the Court to furnish the answer of Judge Hubbell, for the purpose of laying it before the House and getting their action thereon.

The answer was then served upon the Managers; whereupon Mr. Sanders said: The committee having been served with a copy of the answer, ask further time for laying the same before the Assembly.

The President said he had no doubt the Court had no objections to grant the committee all the time necessary; but he thought the Court ought to know about what time would be required by the committee, and hoped it would be as brief as may be.

Mr. Sanders said the committee would lay the matter before the House, and as soon as its replication should be ordered, it should be laid before the Court.

The committee of Managers then withdrew.

Mr. Dunn said he did not precisely understand what was asked by the committee. If the proposition was to postpone the case, *that*, he concluded, under the rules, is to be decided by the Court, by yeas and nays.—After the lapse of the two months time, the committee had had for preparation, he could not entertain a proposition of this kind. The Senator then read the 4th rule pertaining to this point. The motion he apprehended, if it meant anything, was a motion on the part of the Assembly who prosecutes here, to postpone the investigation of the case.

The President said he did not understand the committee as making any motion at all in the case, but only asking time for a short consultation. He certainly made no decision in fact in the case.

After waiting some time for the committee, Mr. Carey announced that he had just learned that the Assembly had adjourned till to-morrow at 10 o'clock.

There could be no object gained by the Senate's sitting any longer as a court. He therefore moved to adjourn the court till 10 o'clock to-morrow.

Mr. Dunn thought it was due to the court that there should be some measures adopted in relation to this manner of proceeding, to protect this court. Certainly this court can not sit here and be treated in this way, in an impeachment trial of this important character. We only receive this information through a Senator's hearing. No doubt he is correct, but that is not the way the Court should be informed. If the Managers have withdrawn, and, without any notice to this body, have resolved not to engage the Court till to-morrow morning, the Court he thought should protect itself. This might occur every day and we never should get even to the threshold of this case.

Mr. Carey agreed with the Senator in his remarks, and said he made the motion to adjourn, thinking there would probably be no better information given to the Court than that he had announced. If there was any other motion to be made, however, he would withdraw his motion.

Mr. Carey then offered an additional rule for the government of this Court, and moved its adoption. The rule was to the effect that whenever the Court shall have convened, the Managers on the part of the Assembly shall not be at liberty to withdraw without permission of the Court; and in all cases, before their withdrawal, an hour shall be fixed for their reappearance, except at recess; and in that case they shall appear at the hour to which the Court adjourned.

The vote was now taken by yeas and nays and the rule was adopted unanimously as one of the standing rules for the government of the court.

The senator from the 1st district (Smith) enquired what would be the effect of the assembly's adjourning during the session of this court—whether in that case the court could continue transacting its business?

The President thought it an important question, as to whether the committee itself can have any life in it in the absence of the assembly.

Mr. Carey believed there would be no dispute but what the court could proceed in the transaction of the business; but it is a question whether we could proceed in the trial of this impeachment without the assembly's being in session.

Mr. Dunn's understanding of proceedings of this kind, when the assembly institutes a prosecution in the form of an impeachment, was that, after the trial commences and during its progress, the assembly are presumed, in the constitution and in the rules, to be present and at the prosecution. That is the constitutional and legal presumption; but, for the sake of convenience, the practice

has been adopted to appoint managers, because it is very clear that 82 members could not sit in this bar and conduct proceedings of this kind. For convenience then they appoint managers from their own body; but the whole assembly are always in legal and constitutional acceptance supposed to be present. If they should withdraw and organize in a different form, the senator thought the court must suspend its proceedings upon this impeachment.

Mr. Carey knew that the opinion had very generally prevailed with the members of the assembly, that it was competent for them, all except their committee of managers, to be in their house transacting their legislation. He however believed the assembly could not be engaged in transacting legislative business while the court was in session and occupied with this trial of impeachment. They are supposed to be present here all the time as the senator from the 13th has said. If they are here, and while they are here, prosecuting this impeachment th y cannot be in their assembly chamber. He was aware that a different opinion had prevailed in the assembly, an opinion that they were to have a great deal of time for legisltion; but his own opinion was that they could not be there in that house transacting business, when the law presumes them all to be here prosecuting this impeachment.

Mr. Reed moved to adjourn to 10 A. M. to-morrow. Motion adopted.

FOURTH DAY.

THURSDAY, June 9, 1853.

After the organization of the Court in the usual form, Senator Dunn said: Mr. President, under the rule adopted by the Court yesterday, I wish the sergeant-at-arms to announce the presence of the Committee, and then the Senate may know that they are ready to proceed.

The Committee now appeared and the Sergeant-at-arms proclaimed: The Honorable House of Assembly, by its Committee.

Mr. BARBER, on behalf of the the Committee, moved that the witnesses on the part of the State be called, in order to ascertain who have been personally and properly served with subpoenas, and that, if any are absent the necessary steps may be taken to secure their attendance.

The motion was adopted unanimously.

The Clerk called the names of the witnesses subpœnæd as follows: E. V. Whiton, E. Hulbert, J. H. Wells, Jonathan Taylor, A. Finch, Jr., Levi Blossom, A. Mitchell, D. H. Chandler, N. J. Emmons, W. W. Graham, Arthur Mc-

Arthur, Sarah Pope, J. P. Greves, James B. Cross, James Kneeland, George B. Smith, George P. Thompson, A. C. Ingham, L. B. Vilas, A. L. Collins, H. S. Orton, A. F. Pratt, A. H. Smith, A. E. Elmore, Alexander Cook, E. Mariner, Frank Randall, Charles E. Jenkins, Wm. A. Barstow, Jane Vanbergen, W. W. Winant, Isaac Woodle, G. D. Dousman, Albert Smith, George Cogswell, Winfield Smith, Wm. Sanderson, Wm. K. Wilson, Charles K. Watkins, Charles James, Jason Downer, Amos Sawyer, R. W. Wright, Julia N. Janes, William H. Petit, H. N. Davis, Robert Weir, H. K. White, Clark Shepardson, H. S. Everett, Matthew Keenan, Joseph A. Sleeper, D. Casey, and Calvert C. White—55 in number.

Of the above named witnesses, only Hulbert, Wells, Thompson, Vilas, Orton and Casey were present.

Mr. SANDERS moved that an attachment be issued to compel the attendance of the absent witnesses, whose names he read.

Senator DUNN inquired for the sake of information, as to which of these witnesses have been served with a personal notice, and whether in every instance of absence it would be proper to order an attachment.—He had understood that some of the notices were constructed under circumstances that would not render them legal notices; and he wished to know, before voting upon the motion, as to an attachment going upon all these absent witnesses.

Mr. BARBER said, the names that have been served by leaving a copy of the subpoena only, are Taylor, Wells, Woodle, Kneeland, Watkins, James, Dousman, Sawyer. All the other witnesses have been personally served to appear here, as appears by the return of the officer.

Mr. SANDERS. I would state for the information of the Senator, that we did not intend to move an attachment for any but those witnesses who have been personally served; and we now amend the motion for an attachment, by striking out the names of those who were served by copy.

The PRESIDENT. The attachment then will issue only against those who have been personally served.

Mr. DUNN. I am satisfied with the amendment.

The motion was now voted upon and agreed to unanimously.

Mr. SANDERS. I suppose the writ of attachment should be returnable forthwith, unless the time is fixed by the Court. The Managers will not be able to proceed until most of these witnesses appear in Court and answer to their names. For that reason we ask for farther delay; and for the farther reason that the Managers have not yet had an opportunity to lay the plea of the

defendant, before the Assembly, we now ask this Court to adjourn until 10 o'clock to-morrow morning.

Mr. DUNN. I do not wish to do any anything in this case that will throw the slightest obstacle in the way either of the prosecution or of the defence. I think however the party prosecuting the impeachment, should pursue such a course in this matter as will bring this important trial to a close at some time; and, when we are asked to grant an adjournment, there should be a substantial reason for it presented to the Court. Now, I will state as a principle governing the conduct of all suits, civil and criminal, that the issuing of an attachment does not necessarily hinder the progress of the case. There is something else required ordinarily to justify an adjournment. If the Court thinks there is necessarily some delay during an attachment, they will generally grant an application for adjournment; but does it not necessarily follow, as a matter of course, that, because an attachment is applied for, it necessarily delays the cause. Now if there is positive delay caused by this attachment, making it necessary to adjourn till to-morrow, I have no objection to granting the application for farther time. If, however, it should be made apparent to the court that there are witnesses present whose examination might be taken up at once, I think we might go on, and that, I know, would be more satisfactory to the Court. The charges are under various articles. Some of the testimony will apply to some particular articles and specifications, and if the committee are ready to proceed upon any one of them, I certainly think it would not be prejudicial to their cause, and would expedite the business of all concerned.

Mr. SANDERS. The adjournment till to-morrow morning is not asked for with the expectation that the attachment can be returned by that time, for many of the witnesses live in distant parts of the State.

The managers have consulted somewhat as to the manner of proceeding in this case, and they deem it not advisable to commence the examination with the few witnesses who are in attendance. The object of asking a farther delay till to-morrow morning was, for the purpose of laying the plea of the respondent before the Assembly, in order that that body may take action upon it and make a replication. The Assembly are not yet aware that the defendant is in Court and has filed his plea. The Assembly was not in session yesterday after this Committee left the Court, and will not be till this morning. That is our reason for asking an adjournment till to-morrow.

The vote on adjournment was now taken, all voting in the affirmative excepting Senators Wakeley and Whittlesey; so the Court adjourned.

The Senate remaining in session, received a message from the Assembly, announcing that they had resolved to employ counsel to prosecute the Impeachment.

The Senate then adjourned till to-morrow at 9¾ A. M.

FIFTH DAY.

FRIDAY, June 10, 1853.

After the organization of the Court, Mr. SANDERS announced that the managers had laid before the Assembly the plea of the respondent, and had been directed by the Assembly to file the following:

Replication by the Assembly of the State of Wisconsin to the plea of Levi Hubbell, Judge of the second Judicial Circuit of the State of Wisconsin, to the Articles of Impeachment, exhibited against him by the Assembly.

The Assembly, prosecutors on behalf of themselves and the people of the State of Wisconsin, against Levi Hubbell, Judge of the Circuit Court of the Second Judicial Circuit, in said State, reply to the plea of said Levi Hubbell, and aver that the charges against the said Levi Hubbell are true, and that said Levi Hubbell is guilty of all and every the matters contained in the articles of impeachment by the said Assembly exhibited against him, in manner and form as they are therein charged, and this the said Assembly are ready to prove against him, at such convenient time and place as the Senate shall appoint for that purpose.

J. ALLEN BARBER,
E. B. SIMPSON,
GEO. W. CATE,
H. T. SANDERS,
EZRA WHEELER,
Committee of Managers on behalf of the Assembly.

This replication the managers asked leave to file in this Court.

The PRESIDENT. If there is no objection, the paper just read will be filed among the papers of the court. (No objection.)

Mr. CATE. Inasmuch as many of the witnesses are still absent, and among them the most important witnesses, I have been instructed on the part of the Committee of Managers to request an adjournment of this Court till Monday morning next, at ten o'clock. I understand many of the witnesses who have been served with subpoenas cannot be here before that time. The managers

do not feel at liberty to take up this case until all the witnesses, or at least the most important of them, are present. We wish to conduct the trial in a systematic manner, and to do so, all the witnesses should be present; and as I presume none of the absent witnesses will be in attendance till Monday, I move an adjournment.

Mr. KNOWLTON. I do not know that it is precisely in order for me to speak upon this occasion, but I wish to enquire of the Committee of Managers, whether it is not probable that some of the witnesses now in attendance could not be examined without prejudicing the rights of the State? There are some witnesses present, I understand, who are extremely anxious to be examined, because it is important for them to leave the Court at an early day. If they could be examined without prejudicing the rights of the State, it apears to me it ought to be done. So far as the defence is concerned, it does not intend to insist upon any haste, nor in any manner to be captious; but it appears to me that these witnesses might as well be examined now as at any other time.

Mr. CATE. I will state for the information of the gentleman, that we are not able to substantiate one single charge by the witnesses now present, alone. We either want other witnesses or documentary testimony. We should not be able to carry on the prosecution of the case in a proper manner, without the other witnesses. There are perhaps some witnesses here who might be examined, but not sufficient to prove any one charge. I presume if we should attempt to go on with the witnesses now present, objections, and serious ones too, would rise against going on with the trial, farther, till others were present.

Senator WHITTLESEY. I shall vote, sir, most resolutely against any motion for adjournment, coming from either side, without some strong reasons for it. All parties in any court should be ready when the case is set down for a hearing. I would try this case in the same way that I would any other case.

Senator REED. I rise to a question of order. No member of the Senate according to our rules, has a right to debate any motion that is made by the Court.

Mr. WHITTLESEY. I simply wished to state my reasons for voting against the adjournment yesterday, and still farther against this long adjournment, that is proposed to-day; but as it is against the rules I shall give my vote against the motion in silence.

The vote on adjournment was now taken, all but Senators Prentice and Whittlesey, voting in the affirmative; so the Court adjourned till 10 o'clock A. M., Monday, June 13th.

SIXTH DAY.

MONDAY, June 13, 1853.

After the organization of the Court, Senator Wakeley offered an additional rule for the government of the Court, to the effect that until further ordered the Court meet at 9 o'clock, A. M., and at 12½ take a recess; and that they shall re-assemble at 2½ P. M., adjourn for the day at 6 P.M. The Court adopted the rule.

Mr. SANDERS. The managers, on the part of the Assembly, are now ready to proceed upon the Trial of the Impeachment of Judge Hubbell; and in obedience to the resolution of the House of Assembly, requiring the managers to employ counsel, we have to announce that we have employed Mr. RYAN to conduct the prosecution for the complaining party, and he appears now before this Court with the Committee of Managers, and in accordance with the arrangements made by the Committee, Mr. RYAN will now open the case to the Court.

THE OPENING ARGUMENT OF MR. RYAN.

Mr. PRESIDENT:—By the appointment of the Managers on the part of the House of Assembly, it devolves upon me to open this important case to the Court. The duty has somewhat hastily devolved upon me, and it has devolved upon me feeling my own inadequacy to undertake the charge which has been thrown upon me; but, without farther apology I shall proceed and do to the extent of my ability, the duty which I have assumed to do.

Mr. President, this is a very solemn tribunal. Trials of this nature are a very, very solemn thing. They are rare; and they are instituted because they are solemn. Judge Story, commenting upon the subject, uses such language upon the solemnity of an impeaching tribunal as I choose rather to use here than my own:

"The objects of prosecutions of this sort in both countries" (England and America) "is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and powers of those tribunals. These prosecutions are, therefore, conducted by the representatives of the nation, in their public capacity, in the face of the nation, and upon a responsibility, which is at once felt and reverenced by the whole community. The

notoriety of the proceedings; the solemn manner in which they are conducted; the deep extent to which they affect the reputation of the accused; the ignominy of a conviction, which is to be known through all time; and the glory of an acquittal, which ascertains and confirms innocence;—these are all calculated to produce a vivid and lasting impression in the public mind; and to give to such prosecutions, when necessary, a vast importance, both as a check to crime, and an incitement to virtue."

This, as I said, is not only a solemn Court but a solemn issue. No one can read these Articles of Impeachment, preferred by the Assembly against Judge Hubbell in this Court, without knowing that the issue, is even more solemn than the Court; more solemn to the accused than any ordinary trial, because, in the language of Judge Story which I have just read, a conviction here records the guilt of the offender, to all coming time, while our history lasts. It is solemn to the public, for if these charges be true, the public have even a deeper interest in this Trial than the accused. If these charges be true, even the present ruin and the future ignominy which may fall upon him, vanish out of sight in the consideration of the vast consequences to the public when public justice has been debased as these charges allege that it has.

Mr. President, we live in a government of delegated powers—what has been termed a representative democracy. The people, in whom originates all power, exercise that power only through their agents, whom they select for particular purposes, and to whom they delegate particular functions.—The sovereignty of the people rests not directly in themselves, but rests in their servants whom they select.—We are all familiar with these things. We see one man in one office, another man in another, and we see them change constantly, and we get accustomed to see it. We ought occasionally to stop and reflect upon the solemnity of the trusts which are delegated to those who exercise portions of the public sovereignty. It is a very solemn trust, and it ought in all official stations to be felt to be a very sacred one. But as human nature is infirm, there is no way to protect either the dignity of the State, or the sovereignty of the people, but to hold all public agents to a strict and solemn account whenever necessary.

Mr. President, much is said, and sometimes somewhat vaguely and loosely said, about the tyranny of various forms of government. Sir, tyranny may be in any form There is tyranny as much in the execution of government as there can be tyranny in the form of government; and when the forefathers of this nation established this federative system of independent republics, both in

the federal government and in all the states of the Union, following the example which has been shown them by the British Government, they all took care to establish a tribunal that all might come to, to protect themselves against the tyranny, the corruption, the oppression of office. There is hardly a petty officer in the length and breadth of this State, or of this Union, who may not within his own little sphere, become a tyrant—not a tyrant in the meaning of the Greek word, *a supreme ruler*, but a tyrant in our English use of the word, an oppressor; and it is well that there should be some tribunal to which all may come, some tribunal in which, in the language of Judge Story, however high and potent the offender may be, he may be called to account; some tribunal in which the public might vindicate the private right against the tyranny and abuse of office.—This is, as I understand, the philosophy of the institution of courts of impeachment. In this solemn tribunal, sir, one branch of the political representatives of the people act in a quasi judicial capacity in the first instance, and then appear as prosecutors; the other branch sit in judgment; representing the whole political power of the people; and there is no one man in the State, so lowly or insignificant, who, if he have sustained a wrong, who, if he have witnessed an abuse, if he comes here and makes it manifest cannot have redress at the hands of this Court. There is no officer of government so high, none so raised above the reach of justice, as that he cannot be arraigned at this bar and held accountable to your judgment. It is a solemn and a powerful tribunal, whose arm can reach the highest, whose power can redress the lowliest.

Mr. President, the tribunal is not only a peculiar one, differing from all ordinary legal tribunals, but the subject on which the tribunal acts, is essentially different from the subject upon which all other tribunals act. Matter of impeachment, subject of impeachment, never has been defined and never will be defined. In all ordinary criminal prosecutions, the Statute and the Common law expressly define the crime;—but in the Court of Impeachment no law written or unwritten has ever defined or ever will define the delinquencies which may be reached by the Court; and there is a fit reason, a sound and becoming reason for the distinction. It is fit that there should be a wide and broad distinction between the prosecution of an individual who on entering society, has surrendered some of his natural rights, who has put under restraint some of his natural propensities for the benefit of society, when he offends against some of these restraints, and him who is not called upon to answer in his personal capacity, but is called upon as the trustee of the power of society for the abuse of that power.

Rawle, in his treatise on the Constitution, holds language which fills my idea better than I can state it myself, and I read it:

"The delegation of important trusts, affecting the higher interests of society, is always from various causes liable to abuse.—The fondness frequently felt for inordinate power, the influence of party and of prejudice, the seduction of foreign states, or the baser appetite for illegitimate emolument, are sometimes productive of what are not unaptly termed political offences, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings."

Although there have been a vast multitude of impeachments, a vast multitude in England and many in this country, no tribunal, no power I am acquainted with has ever attempted to set limits, to set bounds to the subject of impeachment.

Woodeson in his lecture on the English law of impeachment says:

"All the King's subjects are impeachable in parliament, but with this distinction, that a peer may be so accused before his peers of any crime, a commoner (though perhaps it was formerly otherwise) can now be charged with misdemeanor only, not with any capital offence. For when Fitzharris, in the year 1681, was impeached of high treason, the lords remitted the prosecution to the inferior court though it greatly exasperated the accusers. Such kinds of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duties of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws, or introduce arbitrary power, these have been deemed cases adapted to parliamentary enquiry and decision. So, where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counsellor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offences, or to investigate and reform the general policy of the State."

Of the American writers on the subject of impeachments that I am acquainted with, Judge Story discussed the subject the most at length, and I shall ask leave of the court to read at some length from his treatise on the Constitution:

"In the first place the nature of the functions to be performed. The offences, to which the power of impeachment has been, and is ordinarily applied, as a remedy, are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power, (for, as we shall presently see, treason, bribery and other high crimes and misdemeanors are expressly within it;) but that it has a more enlarged operation, and reaches, what are aptly termed, political offences, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensible principles of public policy and duty. They must be judged of by the habits, and rules, and principles of diplomacy, of departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations, of foreign as well as of domestic political movements; and in short by a great variety of circumstances, as well as those, which aggravate, as those, which extenuate, or justify the offensive acts, which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence. They are duties which are easily understood by statesmen, and are rarely known to judges. A tribunal, composed of the former, would therefore be far more competent, in point of intelligence and ability, than the latter, for the discharge of the functions, all other circumstances being equal. And surely, in such grave affairs, the competence of the tribunal to discharge the duties in the best manner is an indispensible qualification.

"In the next place, it is obvious, that the strictness of the forms of proceeding in cases of offences at common law are ill adapted to impeachments. The very habits growing out of judicial employments; the rigid manner in which the discretion of judges is limited, and fenced in on all sides, in order to protect persons accused of crimes by rules and precedents; and the adherence to technical pricinples, which, perhaps, distinguishes this branch of the law, more than any other, are all ill adapted to the trial of political offences in the broad cause of impeachments. And it has been observed with great propriety, that a tribunal of a liberal and comprehensive character, confined, as little as possible, to strict forms, enabled to continue its session as long as the nature of the law may require, qualified to view the charge in all its bearings and dependencies, and to appropriate on sound principles of public policy the defence of the

accused, seems indispensible to the value of the trial. The history of impeachment, both in England and America, justifies the remark. There is little technical in the mode of proceeding; the charges are sufficiently clear, and yet in a general form; there are few exceptions, which arise in the application of evidence which grow out of mere technical rules, and quibbles. And it has repeatedly been seen, that the functions have been better understood, and more liberally and justly expounded by statesmen, than by mere lawyers. An illustrious instance of this sort is upon record in the case of the trial of Warren Hastings, where the question, whether an impeachment was abated by a dissolution of parliament, was decided in the negative by the house of lords as well as by the house of commons, against what seemed to be the weight of professional opinion.

"As the offences, to which the remedy of impeachment has been, and will continue to be principally applied, are of a political nature, it is natural to suppose, that they will be often exaggerated by party spirit, and the prosecutions be sometimes dictated by party resentments, as well as by a sense of the public good. There is danger, therefore, that in cases of conviction the punishment may be wholly out of proportion to the offence, and pressed as much by popular odium as by aggravated crime. From the nature of such offences, it is impossible to fix any exact grade, or measure, either in the offences, or the punishment; and a very large discretion must unavoidably be vested in the court of impeachment, as to both. Any attempt to define the offences, or to fix to every grade of distinction its appropriate measure of punishment, would probably tend to more injustice and inconvenience, than it would correct; and perhaps would render the power at once inefficient and unwieldy. The discretion, then, if confided at all, being peculiarly subject to abuse, and connecting itself with State parties, and State contentions, and State animosities, it was deemed most advisable by the Convention, that the power of the Senate to inflict punishment should merely reach the right and qualfications to office; and thus take away the temptation in factious times to sacrifice good and great men upon the altar of party. History had sufficiently admonished them, that the power of impeachment had been thus mischievously and inordinately applied in other ages; and it was not safe to disregard those lessons, which it had left for our instruction, written not unfrequently in blood. Lord Strafford, in the reign of Charles the First, and Lord Stafford, in the reign of Charles the Second, were both convicted, and punished capitally by the House of Lords; and both have been supposed to have been rather victims to the spirit of the

times than offenders meriting such high punishments. And other cases have occurred, in which whatever may have been the demerits of the accused, his final overthrow has been the result of political resentments and hatreds, far more than of any desire to promote public justice."

"The next inquiry is, what are impeachable offences? They are 'treason, bribery, or other high crimes and misdemeanors.' For the definition of treason, resort may be had to the constitution itself; but for the definition of bribery, resort is naturally and necessarily had to the common law; for that, as the common basis of our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offence. The only practical question is, what are to be deemed high crimes and misdemeanors? Now, neither the constitution, nor any statute of the United States has in any manner defined any crimes, except treason and bribery, to be high crimes and misdemeanors, and as such impeachable. In what manner, then, are they to be ascertained? Is the silence of the statute book to be deemed conclusive in favor of the party, until Congress have made a legislative declaration and enumeration of the offences, which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity; and the party is wholly dispunishable, however enormous may be his corruption or criminality. It will not be sufficient to say, that in the cases, where any offence is punished by any statute of the United States, it may, and ought to be, deemed an impeachable offence. It is not every offence, that by the constitution is so impeachable. It must not only be an offence, but a *high* crime and misdemeanor. Besides; there are many most flagrant offences, which, by the statutes of the United States, are punishable only, when committed in special places, and within peculiar jurisdictions, as, for instance, on the high seas, or in forts, navy-yards, and arsenals ceded to the United States. Suppose the offence is committed in some other, than these privileged places, or under circumstances not reached by any statute of the United States, would it be impeachable?

"Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute books. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings,

in 1788? Resort, then, must be had either to parliamentary practice, and the common law, in order to ascertain, what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate, for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a disposition of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law belonging to, and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert, the power of that impeachment is limited to offences positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors.

"The doctrine, indeed, would be truly alarming, that the common law did not regulate, interpret, and control the powers and duties of the Court of Impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state originally composing the Union, would be entitled to the common law as his birth-right, and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principle, to no rules of evidence. It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail. For impeachments are not framed to alter the law; but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes. Those, who believe, that the common law, so far as it is applicable, constitutes a part of the law of the United States in their sovereign character, as a nation, not as a source of jurisdiction, but as a guide, and check, and expositor in the administration of the rights, duties, and jurisdiction conferred by the constitution and laws, will find no difficulty in affirming the same doctrines to be applicable to the Senate, as a Court of Impeachments. Those, who denounce the common law,

as having any application or existence in regard to the national government, must be necessarily driven to maintain, that the power of impeachment is, until Congress shall legislate, a mere nullity, or that it is despotic, both in its reach, and its proceedings. It is remarkable that the first Congress, assembled in 1774, in their famous declaration of the rights of the colonies, asserted, 'that the respective colonies are entitled to the common law of England;' and 'that they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization, and which they have by experience respectively found to be applicable to their several local and other circumstances.' It would be singular enough, if, in framing a national government, that common law, so justly dear to the colonies, as their guide and protection, should cease to have any existence, as applicable to the powers, rights, and privileges of the people, or the obligations, and duties and powers of the departments of the national government. If the common law has no existence, as to the Union, as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the government, and its functionaries, in all its departments.

"Congress have unhesitatingly adopted the conclusion, that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the new case of impeachment, which have heretofore been tried, no one of the charges has rested upon any statutable misdemeanors. It seems, then, to be the settled doctrine of the High Court of Impeachment, that though the common law cannot be a foundation of a jurisdiction not given by the constitution, or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that, what are, and what are not high crimes and misdemeanors, is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning, by which the power of the House of Representatives to punish for contempts, (which are breaches of privileges, and offences not defined by any positive laws,) has been upheld by the Supreme Court, stands upon similar grounds; for if the house had no jurisdiction to punish for contempts, until the acts had been previously defined and ascertained by postive law, itis clear, that the process of arrest would be illegal.

"In examining the parliamentary history of impeachments, it will be found, that many offences, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this

extraordinary remedy. Thus, lord chancellors, and judges, and other magistrates, have not only been impeached for bribery, and acting grossly contrary to the duties of their office; but for misleading their sovereign by unconstitutional opinions, or for attempts to subvert the fundamental laws, and introduce arbitrary power. So, when a lord chancellor has been thought to have put the great seal to an ignominious treaty; a lord admiral to have neglected the safeguard of the sea; an ambassador to have betrayed his trust; a privy counsellor to have propounded or supported pernicious or dishonorable measures; or a confidential adviser of his sovereign to have sustained exorbitant grants, or incompatible employments; these have been all deemed impeachable offences. Some of the offences, indeed, for which persons were impeached in the early ages of British jurisprudence, would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue. Thus, persons have been impeached for giving bad counsel to the king; advising a prejudicial peace; enticing the king to act against the advice of parliament; purchasing offices; giving medicine to the king without the advice of physicians; preventing other persons from giving counsel to the king, except in their presence; and procuring exorbitant personal grants from the king. But others, again, were founded in the most salutary public justice; such as impeachments for malversations and neglects in office; for encouraging pirates; for official oppression, extortions, and deceits; especially for putting good magistrates out of office, and advancing bad. One cannot but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offences; and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding, and reforming, and scrutinizing the polity of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers."

And so in Rawle:

"The involutions and varieties of vice are too many, and too artful to be anticipated by positive law, and sometimes too subtle and mysterious to be fully detected in the limited period of ordinary investigation. As progress is made in the inquiry, new facts are discovered which may be properly connected with others already known, but would not form sufficient subjects of separate prosecution. On these accounts a peculiar tribunal seems both useful and necessary. A tribunal of a liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as

the nature of the case may require, qualified to view the charge in all its bearings and dependencies, and to appreciate on sound principles of public policy the defence of the accused, the propriety of such a separate tribunal seems to be plain, but not upon the assumed ground that the judges of the supreme court would not possess sufficient fortitude to perform the duty, or sufficient credit and authority to reconcile the people to their decisions."

"On the same ground we may advert to the exercise of the power of impeachment. In neither of the cases already mentioned, were the acts charged on the parties accused, statutory offences. Yet the doctrine opposed in this work would render the power of impeachment a nullity, in all cases except the two expressly mentioned in the constitution, treason and bribery; until congress pass laws declaring what shall constitute the other 'high crimes and misdemeanors.'

"And thus the question seems to be at rest in the contemplation of both these courts, for such they must be termed, when acting in those capacities, and both of them are courts from whose decision there is no appeal."

Mr. President, I have read at some considerable length from these authors, and they are the principal authors now occurring to me, indeed they are the principal American writers upon the subject of impeachments. I have read from them for the purpose of showing that upon the principles that they themselves lay down, principles which they had gathered from the whole history of impeachments, they always fail, necessarily fail when they attempt to set a limit to the subject of impeachment. Their general principles all show that there can be no limit to it, that the matter of impeachment is as various as the abuse of office, that it is as extensive and as ramified as the abuse of office; and they are obliged to admit it, and while Judge Story, at least, seeks to set some limit to it, he is obliged to admit, what all precedents in the United States will show, that all impeachments in this country have been for offences not indictable. The impeachment of Judge Chase, before the Senate of the United States, every one is familiar with, and *there* was no indictable offence. It was the simple arbitrary exercise of judicial power. He was found not guilty. Judge Pickering was impeached before the same tribunal and convicted. What were the charges? He was charged with discharging a vessel from the custody of the marshal without requiring the security provided for by Congress, and one or two other offences, but those charges were not one of them indictable, but mere abuses and delinquencies in office. He was convicted by the Senate of the United States, and removed from his office

of Judge. Judge Peck was impeached before the same tribunal upon one single charge, the abuse of judicial power, in punishing a member of his bar for contempt. He was acquitted, but no one doubted that the charge was sufficient, no one questioned it; but he was found not guilty.

In Pennsylvania, there have been a number of impeachments. I have at hand but one case, that of Judge Addison. The charge was that, being President Judge, he refused to allow his associate, one of the side judges to address the grand jury—no offence by law, no offence by statute; and yet he was convicted and removed from his office. I refer to these American precedents in preference to the English, because I feel that here in this tribunal they will be more in point; and they all establish what I seek to establish before this court, that matter of impeachment is not defined, that so far as it relates to official misconduct, which is unlimited, it is not defined.

There is controversy in the books with which I have not troubled this court—whether officers are punishable for mere crimes, extra-official crimes. That question does not arise here, and I won't allude to it, because all the charges here are of official acts. The defendant is charged with no crimes but as such were connected with his official character.

As far then as the books are concerned, matter of impeachment has never been defined, and never will be defined; and as long as there remain, as, in the infinite variety of the human mind there ever will remain, new ways of abusing power, of abusing trust, of practicing corruption and malversation in office, so long will matter of impeachment remain undefined by any written or unwritten law. We contend that by the common law of impeachments, without any reference to the peculiar provisions of our Constitution, all official violations of the statute or common law, all abuses of official power, all violations of official duty, all prostitutions of official character to private interest or personal passion are matter of impeachment.

In regard to the judicial office our Constitution furnishes a double remedy which, in the name of the Assembly, and of these their Managers, I claim to be a concurrent remedy. I have heard the idea advanced that there was a demarkation between the subject of address and the subject of impeachment. I apprehend there is no such difference. (See Const. Wis.)

There is nothing in the body of the Constitution itself, nothing in the terms of this Article which shows that the remedies were meant to cover different grounds, or that there was any matter taken by the remedy of address from the remedy of impeachment. In the Constitution which was framed for this

State and rejected, the Committee reported what this section would be, if the construction claimed for it had been given to it. The report read thus: "Any Judge of the Supreme or Circuit Court may be removed from office by concurrent resolutions of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein; but no removal shall be made by virtue of this section, unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence; and no Judge shall be removed for any cause for which he might have been impeached." When the article on the judiciary came before the Convention, the last clause of that section was stricken out, and the article was adopted by the Convention without that in it, and it never has been restored; so that there is nothing left for supposition, and so far as this State was concerned, there was a direct repudiation of the idea that remedies by address and by impeachment are not concurrent. Indubitably it would have been competent for the two Houses of the Legislature upon these articles of impeachment, to have proceeded by address and to have removed the Judge from office; but they have seen fit to proceed by impeachment, and now the power of address is a difficulty not in our way, because the same things are the subject of two remedies. Now in regard to impeachments, what is the language of our Constitution: "The court for the trial of impeachment shall be composed of the Senate. The house of representatives shall have the power of impeaching all civil officers of the State, for corrupt conduct in office, or for crimes and misdemeanors."

For corrupt conduct in office, *or*, for crimes and misdemeanors! Language could not be more emphatic or more broad. For corrupt conduct in office, OR, for crimes and misdemeanors!! The disjunctive prohibits any doubt upon the meaning of these phrases—not for crimes and misdemeanors alone as the constitution of the United States says; but for corrupt conduct in office *or* for crimes and misdemeanors. What is corrupt conduct in office? This is a term put by itself to bear its own weight, to have its own meaning in the constitution, and what does it mean? What is corrupt conduct? It is mal conduct. It is malversation. It is omission of that which is duty, or the doing of that which is contrary to duty. It embraces all official abuse, all wilful maladministration. Now, this constitution goes far beyond that. It does not, when it says corrupt conduct in office, go on to say or crimes and misdemeanors in office. It gives the power of impeachment for all corrupt conduct in office, and for all crimes and misdemeanors. They cannot mean the same

thing. The convention, the gentlemen who framed that language did not stultify themselves. They meant different things by the use of that disjunctive. They intended that you should understand different things by that disjunctive, and by that use of different terms—corrupt conduct in office or all crimes and misdemeanors whatever—not in office, but crimes and misdemeanors by the law of the land. You have then as the subject of impeachment every thing which you can call corrupt conduct in office. All wilful mal-administration of office is corrupt conduct in office. He who, no matter how little, departs from the duties of his office, is guilty of corrupt conduct in his office. He may mistake, he may blunder; but if he depart wilfully, then he is corrupt, and that is corrupt conduct in office, and he is then punishable under this constitution. You may then go out of crimes and misdemeanors for matter of impeachment. And it is not a little noticeable, that this very language of the constitution seems to have been framed in view of the commentary of Judge Story upon the word *high*, applied to crimes and misdemeanors, in the constitution of the United States. "It must not only be an offence but a *high* crime and misdemeanor," says Judge Story, dwelling upon the word *high*. And the constitution of Wisconsin, while it takes the words crime and misdemeanor omits the word *high*, and covers every thing in *crime* and *misdemeanor*. I have been told that it has been contended that the last provision—"But the party impeached shall be liable to indictment, trial and punishment, according to law." I have been told that that conveys the idea that nothing is impeachable except what is indictable. Undoubtedly certain things are impeachable which are indictable, and according to the policy of the law which I have read to you to-day the punishment of the offender is left to the ordinary tribunals of the country when he commits an indictable offence which is also an impeachable offence; but that is a mere reservation of the general doctrine, that officers impeached, shall not escape the ordinary punishment of indictable offences. The policy of the court of impeachment is to reach official offence, "political" offence, as the books here call it. The policy of the legal tribunals of the country is to punish ordinary crime. Ordinary crime in a public officer may be a matter of impeachment. Many acts are so. Impeachment merely tries the officer, and judgment is merely removal from office and disqualification for office; but the person is handed over to the ordinary tribunals of the country. But there is nothing there which limits the subject of impeachment to indictable offences; there was nothing such intended in the constitution. The whole purpose of

that clause was to provide for all doubt. One court has nothing to do but with a personal offender. One court merely reaches the public officer, merely reaches and punishes official offence. The other court deals with the man, and with the offence against the ordinary law of the land. There is nothing there, and no argument can be founded upon it, to show that the mere reservation of the right to indict, after impeachment, is any limitation of the right to impeach for indictable offences. If that were the construction, if the framers of this constitution went back ages to shield public officers from accountability, if that is the doctrine, let the people of this State know it. If, except for high handed crime no public officer of the state is accountable; if, for all the malversations all the petty tyrannies and wrongs that one, dressed in a little brief authority, can inflict upon the people of this State, he may, by a juggle in the constitution, be sent scot free over the earth to continue his practices—tell that doctrine to the people of this State, and I am prophet enough to know that that constitution won't stand ninety days.

There is a peculiarity about that language to which also I wish to allude. All corrupt conduct in office is one branch; crimes and misdemeanors are another. My first impression was that crime was used as a generic term of which misdemeanor was a lower grade; but, singular enough, if that tautology was used, crime embraces felony and misdemeanor both, and to use misdemeanor in that sense would have been to add a part after the whole had been named. The word misdemeanor, too, has a broader sense than the strict legal meaning. However, that is a matter of no great moment here.

The power to exercise this jurisdiction which I have been discussing, Mr. President, is one of great political power. This is a political court, and we are now engaged in a political trial. The whole process of impeachment, from beginning to end, is a politico judicial power vesting in the legislature, both houses carefully dividing the power between them. It is for the trial of political offences, that is to say, as I understand the term official offences. It is a court composed of a political body. The present body, composed as it is of both branches of the legislature, is a political body. It seems here to be a great political court, in which the sovereignty of the people in its most broad and ample form is politically represented. It is the court for the accounting of the popular servants for all trusts delegated to them. For their *personal* responsibility, I say again, they are left to the ordinary tribunals of the country; and no man can appear here at your bar but a public officer. The sole power to impeach is vested in the assembly. That

body only can initiate; that body only, under the constitution, can call the offender to account; that body only, under the constitution, can designate the offence or limit its character. The subject of impeachment, as I have endeavored to show, is undefined. Each case as it arises must rest on its own peculiarities. The power to impeach is not a mere power to prosecute. It is a judicial power, a mixed political and judicial power, and embraces and includes the power of judgment of what is impeachable. I have endeavored to show you by the authorities and the precedents, that at the time of the adoption of this Constitution, the subject, the matter of impeachment was utterly undefined, and likely forever to remain so; that it not only was then undefined and unlimited, but from its very nature was likely never to be defined, never to be limited by any written or unwritten law—Sir, if the subject of impeachment were defined, if the matter of impeachment were defined, then it would probably devolve upon this court to say whether the presentation of these articles of impeachment, by this House of Assembly, had come within the subject of impeachment, so defined; within this known law limiting matter of impeachment. But when the Constitution was formed, and the whole subject matter of impeachment was utterly vague, and utterly unlimited, every case standing by itself, and governed by its own peculiarities, I say that the power to impeach is, or includes the, power to define and limit the offence, and there is no precedent against it; at any rate I have not been able to find any for it.—There certainly is no precedent against it.—In all the impeachment cases which I have been able to find, when the articles of impeachment were presented by the house, and the case came into the court of impeachment, no question of the subject of impeachment was ever made, but the plain and simple duty of the house was, to try the impeachment; with the exception of one case, that of senator Blunt, who was impeached in the senate of the United States. Mr. Blunt raised several questions in abatement, but only one was determined. The question which he did raise, and which was determined, was that a senator was not one of the civil officers who could be made the object of impeachment within the meaning of the constitution of the United States. The constitution defines what officers shall be the object of impeachment. Mr. Blunt averred to the senate that a senator was not one of those officers; and the senate having the written guide of the constitution before them, to put a construction upon, decided that a senator was not an officer of the United States within the meaning of the constitution, and therefore not an object of impeachment. There the senate had the written constitution to pass upon; but here the law, the subject, the

matter of impeachment being utterly undefined, the discretion as to what is matter of impeachment must vest somewhere; and, as I contend, our constitution gives it to the assembly to say, in every case, what shall be deemed matter of impeachment; and I think it is right. The senate stands aloof from all this proceeding, without power to initiate; without power, in the first instance, to call the offender to an account; without power to limit or designate his crime. The senate stands aloof, with only the power, as they are sworn, "truly and impartially to try the impeachment according to the evidence." Sworn, as you are, as a great political jury, your oath, the oath of every member of this court is "truly and impartially to try this impeachment, according to the evidence;" that is the oath of a great political jury.

I have deemed it not improper, Mr. President, in view of the questions which I have anticipated would be raised here, or which it has been intimated to me would be raised, to go thus, perhaps, somewhat tediously, into the general doctrines upon the subject of impeachment. I will not dwell farther upon them now. This impeachment is the impeachment of a judicial officer. In order to come to a proper consideration of the charges, which have been preferred against him, it is fit to recur to general principles to consider the nature of judicial office. As I had ococcasion to say before, we are prone, by an infirmity of our nature, to look by habit, by custom, by daily use—we are prone to look upon very solemn things with very trifling consideration.

Mr. President, man was created for society but not created in it. Society was his destiny—not his natural state. Society is the school of the human race, to soften the hard, to subdue the brutal, to educate all the elements of his nature.—Man surrenders to society the exercise of many of his natural rights, the control of many of his natural propensities. His interests, his passions often lead him to rebel against that restraint which he voluntary gives to society. Man, in his present state, cannot live in the present state of society without restraint. Government furnishes the restraint which is required, and when one man's passions or interests clash with another man's, or with the laws of society, government has founded the judicial institution, as an arbiter between man and man, and between man and society. This judicial power is the most delicate, the most pregnant, the most holy of all mere human trusts. All man's social rights are subject to its control. High and low, rich and poor, weak and powerful, are all alike subject to stand for judgment at its bar. There is no strength in the palace, there is no insignificance in the shantee to shut out the power of the law. There is no place which can shut a door against the univer-

sal irresistible, subtle influence of judicial power.—Mr. President, we are familiar with these things, but they are grave and solemn if we come to consider upon them. I say again, there is throughout this State and throughout this land, no man's home, however grand or however wealthy, no man's home however lowly or poor and insignificant, that the subtle judicial influence cannot penetrate. What are here the power of peace and war? What is the power of legislation and of taxation? They are powerless to affect our daily peace.

President and Governor, legislature and congress, have little power to pass the meanest threshhold. Their power is remote and hardly felt. The humblest home in this State; the poorest log hut in this State, has its daily peace beyond the power of congress, beyond the power of the legislature, beyond peace and war in all ordinary circumstances. But it is far, far other with the judicial power. The hand of the judge reaches every man's head. His mandate penetrates every home. In his keeping the bread we give our children, and the daily peace of our homes in which our children eat their daily bread. In his keeping is the sanctity of our homes, and the life, liberty and honor of every man and woman. That is no overdrawn picture. Reflect upon it; and I invite every member of this court to reflect upon it. I only ask a serious and solemn consideration upon that which has become trite by use. There is no force so subtle, so universal, so irresistible among us, as the judicial power. It is a most holy trust in the hands of any man—a trust from which the wisest and purest of men, when they reflect upon it, might well shrink—a trust, sir, which should never be prostituted to an unclean heart or a perverted mind.—And I say, Mr. President, woe to the land where passion warps the judicial mind—where corruption sways the judicial heart—where justice is bartered for passion or for interest—where judges sit to reward friends or punish enemies—where there is a back door access to our courts—where judges hear causes with a private ear—where the scales of justice are swayed by the judges' interest—where the bandages are removed from the eyes of justice, to see not the law, but the person. That, if there be such a land, is a land of no security, no liberty, no virtue. It is a land of fraud, robbery, and tyranny, in the judicial name. A writer aiming to give us some idea of the place of horror, says "in hell there is no order but that eternal horror reigns."

Justice, Mr. President, is the order of heaven; corruption is the horror of hell; and I say, that beyond all other officers of the government, the purity of the judiciary is the palladium of prosperity and liberty—and the virtue of the judge should be like Cæsar's wife, above suspicion, beyond suspicion—unsullied,

uncontaminated, unassailably pure; so pure, to meet our native sense of justice and right, that even public suspicion of judicial virtue is an incalculable evil, poisoning the health, and disturbing the peace of society, even as the suspicion of Cæsar's wife disturbed Cæsar.

In this spirit, Mr. President, and with these views of the judicial office and character, and the responsibilities resting upon you here, I will leave this branch of the subject.

The Assembly has impeached the Judge of the Second Judicial Circuit for various delinquencies in that office, and have brought against him grave and serious charges—solemnly, terribly grave and serious. No impeachment—not Lord Macclesfield's, not Lord Bacon's—weigh down that paper in the scales of moral right; and if, Mr. President, the judge of the second circuit doubts the sufficiency in law of any of the said charges and specifications, for the purposes intended, I cannot but feel it as additional reason why he should be no longer judge of the second circuit. The charges, Mr. President, take a very wide range; and if it shall appear to this court that they are true—if they shall be sustained in evidence here—they will prove to you not mere isolated acts of corruption, but an habitual and uniformly corrupt judicial career. If these charges be true, the defendant has not fallen by one or more isolated, unhappy acts, but he has filled his whole judicial carreer with guilt; indeed, he has not *fallen* into crime, but he has never *risen* into virtue.

These charges are eleven in number, most of them having more or less specifications attached to them. I propose now to make a brief review of the substance of these charges, dwelling very little by way of explanation upon the evidence which the Managers of the Assembly will adduce here to confirm them.

[Here Mr. Ryan read the first charge.]

In that charge, Mr. President, facts are specially pleaded. We contend that those facts establish a case of direct and absolute bribery.

Here the Court then took a recess.

AFTERNOON SESSION.

Mr. Ryan continued—

Mr. President, at the time of the adjournment—for which kindness I thank the Senate—I was about to enter into some consideration of the charges in this case. I had said that the construction of the first charge was, that it was a charge of bribery. The charge details that a suit was instituted in the court of

Milwaukee county, and I understand that the amount of twenty thousand dollars was involved in that suit. The peculiarity of this case is, that Mr. Sanderson had an interest in the recovery of the plaintiff. The evidence is, that Sanderson and the Comstocks had been partners, and had ceased to be partners, and the Comstocks had indemnified him against liabilities of the firm. Upon what was supposed to be the failure of the Comstocks, this attachment had been issued upon property assigned by them; so Sanderson had an interest in the recovery of the plaintiff, although he himself was a defendant. The charge details that after the institution of that suit, the Judge permitted Sanderson, so interested in the suit, and a party to it, to consult and advise with him upon the subject matter of the suit, and that the Judge did consult and advise with him contrary to his said duty and obligations, upon the subject matter of that suit; and afterwards, upon a traverse of the affidavit, upon which the attachment was executed, which had been tried before the court without a jury and submitted to him, and while the Judge of the court held it under advisement, the Judge did, contrary to his said duty and obligations, reveal to Sanderson that he would decide it as he, Sanderson, was interested that it should be decided, in favor of the plaintiff.

That, if the charge stopped there, would be a grave charge. That consultation and advice, that announcement in advance of the public announcement from the Court does not mark the true and impartial judge. There is no man—lay or lawyer—who on hearing these facts, would have looked upon the administration of justice as true, upright and impartial. The judge, sir, upon the *bench* should hear the cause; he should only know it sitting upon the bench; he should not know the suit nor suitors of his Court out of doors. There should be no back-door influence with him. There should be no private ear to hear and weigh an important cause. There should be no private announcement of a decision kept under advisement in that way. Such an announcement, that a decision is going to be in favor of a suitor, if not crime itself, is the grossest evidence of crime. No true mind can regard it without deep suspicion of guilt.

But the charge does not stop there; it proceeds to state that afterwards, and before the decision of the cause, the judge solicited a loan of money from that same Sanderson, who had so consulted him, who had been so advised by him, who had known his decision in advance—from *him* he had so solicited a loan of money! A judge sitting upon a bench is but a man; but he is in that peculiar position that he ought, as far as possible, to avoid all pecuniary and

property obligations and favors to and from all men, and he should shrink with horror from any pecuniary transactions with any man who is a suitor in his Court. No judge—and I believe it is the sentiment of the entire community—no judge should tamper with the pocket of a suitor in his Court. A judge should with rare and necessary exceptions, and distrusting his own nature, have no pecuniary obligations with any suitor in his Court.

But the transaction is more marked than that. If it stopped there it would not be without precedent. We all know the history of some judicial impeachments, where bribery was carried on to an enormous extent, under the shape and color of loans. But it does not stop there; having thus been advised with and advised Sanderson; having thus privately and in advance, communicated to him a decision to be made in his favor; having then borrowed this money from him, the charge proceeds to state that no voucher was taken for that money; that it bore no marks of an ordinary money transaction; that it bore no interest; that on its face it bore a strong suspicion of a bribe, which only the strongest evidence could rebut. Sanderson took no voucher, and they made no agreement about time of payment, and Sanderson charged the money to the plaintiff in the suit, to whom the judgment was to be rendered. But afterwards a voucher was made, but the sum of money so remained unpaid and unsecured by Judge Hubbell, and it was intended and regarded by Sanderson as a gift, for a long time, and until after said Hubbell and Sanderson were advised that said Hubbell was threatened with prosecution before the constitutional tribunal for receiving money as a bribe. I think the testimony will be that the payment of the money was somewhere about the month of May. and from that time, until the first rumor came about that the judge of the second district was about to be arraigned before the constitutional tribunal to give an account of his stewardship in that office, that money remained unpaid, with no voucher, no interest, and no color of an ordinary business transaction about it. The proof will be, I believe, that in the first conversation which took place between Judge Hubbell and Sanderson upon the subject, the conversation commenced upon the subject of the investigation which was about being made of his judicial conduct; then a due-bill was made for that money.

I should have stated, however, that a previous conversation between the parties will be testified to; that some time in September Judge Hubbell stated to Sanderson that he was then ready to pay the money; that Sanderson in some manner of expression, said that he need not think of paying the money until he called for it; that Judge Hubbell, after saying that he could pay it with

convenience, said, "You don't think I would take that money as a gift!" that Sanderson's remark put him upon his guard as to the character of the transaction. It there remains till the proposition to call him to account for his judicial conduct;—then a note or due-bill was given for the money, and still afterwards, while this Legislature was in session, while the subject of his judicial conduct was before the Assembly, a collusive attempt to pay that money was gone through with. A note passed from the Judge to Sanderson; Sanderson called on the Judge, surrendered the due-bill, and the money was paid to Sanderson, which he deposited upon a chair and went out of the office, and there the money was left. In the name of common sense, why all that evasion? Why attempt to cover up that transaction, if it was a legitimate transaction? If there was no seething in the hearts of both? If it was not a bribe—if it was not a corruption of the fountains of justice—why all that evasion, all that chicanery to cover it up? It is not without its precedent. Lord Macclesfield dealt in some similar way. I read from the evidence of one of the witnesses who was examined upon his impeachment, and who had purchased an office to which he could not be admitted without the sanction of the Chancellor:

"After my being introduced to my Lord Chancellor, there was some time for my lord's consideration. Near a week after, a message was sent me by Mr. Cottingham, that my lord would be ready to admit me such a day. Before the day came, I had a message contradicting it, upon my Lord Chancellor's being engaged to attend the council on that day. After that I expected the appointment of another day for that purpose; and in the mean time this affair had got into the public newspapers, as every thing does, and I was named by every body to be the person fixed upon, and people resorted to me to transact the business of the office, which I could not do without being duly admitted. And shortly after that time, there was a report spread, that my Lord Chancellor had designed to make a present of the place to some gentleman in the country, which gave me an uneasiness, and put me upon an expedient, that since I could not have ready access to so great a person as his lordship, I went to Kensington one morning to wait upon the Countess of Macclesfield; and upon sending up my name, and that I desired to speak with her; in a short time I had the honor of seeing her, and acquainted her that I was the person my lord had promised the office to, and that I could not proceed therein without being sworn; therefore I desired her ladyship to intercede with my lord, that I might be speedily sworn in. Her ladyship said, she never did

meddle with any affairs of a public nature. I used several arguments with her, as that the thing was now public and in print, that it might be a great disappointment to me, and might affect my character, if my lord did not think fit to admit me. I laid a good deal of stress upon these arguments; and I acquainted her ladyship that I did not expect or desire to come in without the due present that is always esteemed the perquisite of the great seal. Then I repeated those other arguments again, that my character might be affected by these disappointments; whereby her ladyship was prevailed upon to promise she would write a letter, and acquaint my Lord Chancellor with it. Before I went away from the room where I had the honor to be with the lady, I did leave upon the table bank notes to the value of £5,250."

The only difference in the transaction was that in this instance the money was laid upon a table and not upon a chair. At any rate the delicacy with which the money was left upon the chair in the case before us is not without a precedent in the history of judicial corruption. I can put no construction—the Managers can put no construction—and I assume from the votes of the Assembly, that they can put no construction upon this transaction, if it be true, than that it is a case of ill-disguised. plain, palpable corruption.

[Mr. Ryan read the second charge.]

There are under that charge three specifications—three separate suits. I regard this charge of very much the same complexion with the first. The first is adjudicating in the case of suitors in the court upon pecuniary compensation; the second is adjudicating in the court upon his own causes.—The moral aspect of the two charges is very much one and the same. The statute which I shall presently read of course prohibits a judge from sitting in a cause in which he is interested. I believe that even the Cadis in Turkey sit in no cause in which they have a personal interest, and it would be worse than idle for me to stand here and expatiate upon the enormity—the very gross injustice of a judge sitting upon a cause in which he is interested, and which is substantially his own cause.

[Mr. Ryan read the third article.]

This article charges that an individual, having been convicted in Dane county, for an assault with a deadly weapon with intent to kill, Judge Hubbell did, arbitrarily and illegally, sentence the individual so convicted only to pay a fine of two hundred dollars, when the statute makes that offence peremptorily a penitentiary offence. It has been the boast of our political organization and our judicial administration, that every man stood upon the law; that the law

is spread over all men; and that the judge sitting upon the bench has no power over the law; that the duty of framing laws is delegated to the legislature; that the duty of expounding the law is delegated to the judiciary. Here, then, is a man convicted of an offence of a high order which the legislature has seen fit to make a penitentiary offence, and for some cause the judge has seen fit to trample upon the law, and say that what the state had said should send him to the penitentiary, should only oblige him to pay a fine of two hundred dollars. The statute was that if any person should assault with a deadly weapon with intent to kill he should be imprisoned not more than five years nor less than one. This charge is somewhat different from the others; it is, in substance, a high-handed, tyrannical usurpation of authority, above and beyond the law, making the law bend to the personal will of the judge upon the bench.

[Mr. Ryan read the fourth article.]

The statute is this—"In case the judge in the circuit court shall be interested in any cause in said court, or shall have acted as attorney in any cause, the said judge shall not have power to determine such cause or causes."

That provision is simply in affirmance of a high moral principle—no man shall be judge in any case in which he is interested, or judge in any case in which he has been feed as an attorney or counsel, because the essential purity and impartiality which are essential, necessary—the very essence, indeed, of the administration of justice cannot be had, cannot be looked for in such a case.—We not only have that statute, pointedly prohibiting a judge from sitting in a cause in which he is interested, but we have great moral principles engrafted into the body of the law, which go far above any positive enactment. In the year 1850, the court of appeals of the State of New York discussed the subject of judicial disqualification at some considerable length, and with very great ability.

In the case of Oakley vs. Aspinwall, vol. 3, p. 548 of Comstock's Reports, Judge Hurlburt says:

"It is suggested by the petition of the respondent, that the decision of this court by which the judgment of the Superior Court in his favor was reversed and a new trial ordered in this case, was entered through inadvertency, and he prays that both the judgment of this court and the *remittitur* may be vacated, and that the appeal may be re-argued. This application is based on several grounds, the most important of which is, that the appeal was argued before seven members of the court, one of whom, Judge Strong, was related to the appellants Aspinwall within the seventh degree, and was therefore disqualified

to sit as a judge, and to take part in the decision of this cause. That two members of the court voted to affirm the judgment of the court below, and five, including Judge Strong, voted for reversal; and that without the vote of the latter the judgment would not have been reversed.

"It appears that, upon the appeal being moved for argument, Judge Strong informed the counsel for both parties of his relation to the Messrs. Aspinwall, the appellants, and that because of it he should decline to sit in the case; but that the counsel consented that he should sit, and that he was particularly urged to it by the counsel for the respondent; that he finally consented to hear the cause upon its being suggested, that the apellants Aspinwall were not parties in interest, and would not suffer by judgment, as they were indemnified by a Mr. Baker, who had the real interest in the matter of litigation.—Under these circumstances the judge retained his seat—but his opinion and vote were averse to the party whose counsel was mainly instrumental in inducing him to serve, and hence this motion, which is made by the same counsel, who now alleges that he was not authorized by his client to consent in the premises, and that if he were, such consent is not an answer to the present motion.

"It is difficult, under the circumstances, to regard this application with favor, since the position in which the court is placed in respect to the cause has been brought about mainly by the officious intermeddling of the counsel for the moving party, with the scruples of a judge who, with a proper sense of duty, promptly declined to sit in the cause; but the unfavorable aspect of the motion in this point of view, must not cause us to overlook the principles upon which it is founded, which are of too great importance in the administration of justice ever to be lost sight of.

"The appellants Aspinwall were defendants in the judgment from which this appeal was taken—they were personally liable to pay it, as between them and the respondent, an execution to enforce it might have gone against their property. They may have been indemnified—but that did not exempt them from primary liability on the judgment, and hence did not divest them entirely of interest in the case. They were then parties to the suit, and having such an interest as to give rise to the objection now taken to Judge Strong's participation in the decision of the cause, because of consanguinity to them; and the question is, what effect had such participation upon the judgment pronounced by this court?

"The first idea in the administration of justice is, that a judge must necessarily be free from all bias and partiality. He cannot be both judge and

party, arbiter and advocate in the same cause. Mankind are so agreed in this principle, that any departure from it shocks their common sense and sentiment of justice. It was long ago reported, on the authority of Holt, that the mayor of Hertford was laid by the heels for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, although he, by the charter, was sole judge of the court. (1 Salk. 396.) No information has reached us at this day tending to show that the treatment which the mayor received on this occasion was deemed too severe by his cotemporaries, although his apology, to wit—that he was sole judge of the court—has been held by some modern judges to excuse them for determining upon matters and causes in which their relations were parties or were interested. But it seems to me far better, that causes as to which the sole judge of a court is presumed to be biased in favor of the parties should remain undetermined until the legisture should provide an appropriate tribunal for their decision, than that the principle which demands complete impartiality in a judge should ever be violated. The urgency of a particular case is not so much to be regarded as the elevation and honor of courts of justice, whose dignity and purity constitute a main pillar of the State.

"Partiality and bias are presumed from the relationship or consanguinity of a judge to the party. This presumption is concluclusive and disqualifies the judge. A justice of the peace, who was son-in-law of the plaintiff, insisted on retaining jurisdiction of a cause, notwithstanding it was objected against by the defendant; and the supreme court held that this was of itself evidence that the trial was not fair and impartial, and reversed the judgment. (Bellows, &c., v. Pearson, 19 John R. 172.) In the case of the Washington Ins. Co. v. Price et. al. (1 Hopkins' ch. R. I.) Chancellor Sanford declared that it is a maxim of every code in every country that no man should be a judge in his own cause; that it is not left to his discretion or to his sense of decency whether he shall act or not; that when his own rights are in question, he has no authority to determine the cause; that so well was this principle understood that in every court consisting of more judges than one, the judge who is a party in the suit takes no part in the proceedings or decision of the cause, and that he knew of no example of the contrary conduct in this country.

"The provisions of our revised statutes on this subject profess to be merely declaratory of universal principles of law, which make no distinction between the case of interest and that of relationship, both operating equally, to disqualify a judge. Hence the statute declares, that 'no judge of any court can sit as such in any cause to which he is a party or in which he is interested, or in

which he would be disqualified from being a juror by reason of consanguinit or affinity to either of the parties." (2 R. S. 275, § 2; Reviser's Notes, 3 1 S. 694.)

"After so plain a prohibition, can any thing more be necessary to prevei a judge from retaining his seat in the cases specified? He is first excluded b the moral sense of all mankind; the common law next denies him the rigl to sit, and then the revisers of our law declared that they intended to embod this universal sentiment in the form of a statutory prohibition, and so the placed this explicit provision before the legislature, who adopted it withou alteration, and enacted it as the law. The exclusion wrought by it is as com plete as is, in the nature of the case, possible. The judge is removed fro the cause and from the bench; or, if he will occupy the latter, it must be onl as an idle spectator and not as a judge. He cannot sit as such. The spirit an language of the law are against it. Having disqualified him from sitting as judge, the statute further declares that he can neither decide nor take part i the decision of the cause, as to which he is divested of the judicial functio Nor ought he to wait to be put in mind of his disability, but should himsel suggest it, and withdraw, as the judge with great propriety attempted to d in the present case. He cannot sit, says the statute. It is a legal impossibility and so the courts held it. (Edwards v. Russell, 21 Wend. 62; Foot v. Morgan 1 Hill, 654.)

"The law applies as well to the members of this court as to any other; or i there be any difference, it is rather in favor of its more stringent application t the judges of a court of last resort, as well, because of its greater dignity an importance as a tribunal of justice, as that there is no mode of redress ap pointed for the injuries which its biased decisions may occasion. The law an the reasons which uphold it, apply to the judges of every court in the state from the lowest to the highest.

"It was, however, urged at the bar, that although the judge were wantin in authority to sit and take part in the decision of this cause, yet that havin done so at the solicitation of the defendant's counsel, such consent warrante the judge in acting, and is an answer to this motion.

"But where no jurisdiction exists by law, it cannot be conferred by consent especially against the prohibitions of a law, which was not designed merely fo the protection of a party to a suit, but for the general interests of justice (Low. v. Rice, 8 John. 409; Clayton v. Per Dun, 13 id. 218; Edwards v Russell, 21 Wend. 63; 21 Pick. 101.) It is the design of the law to maintai

he purity and impartiality of the courts, and to ensure for their decisions the spect and confidence of the community. Their judgments become precedents, hich control the determination of subsequent cases; and it is important, in hat respect, that their decisions should be free from all bias. After securing isdom and impartiality in their judgments, it is of great importance that the ourts should be free from reproach, or the suspicion of unfairness. The party ay be interested only that his particular suit should be justly determined; but he state, the community is concerned not only for that, but that the judiiary shall enjoy an elevated rank in the estimation of mankind.

"The party who desired it might be permitted to take the hazard of a decion, if he alone were to suffer for his folly—but the State cannot endure the candal and reproach which would be visited upon its judiciary in consequence. Although the party consent, he will invariably murmur if he do not gain his ause; and the very man who induced the judge to act, when he should have forborne, will be the first to arraign his decision as biased and unjust. If we eeded an illustration of this, the attitude which the counsel for the moving party in this case assumed towards the Court, the strain of argument which he ddressed to it, and the impression which it was calculated to make upon an udience, are enough to show, that whatever a party may consent to do, the State cannot afford to yield up its judiciary to such attack and criticism as will inevitably follow upon their decisions made in disregard of the prohibitions of the law under consideration.

"The constitution of 1846 has been referred to, but so far as I can perceive it is silent upon this subject. It declares that there shall be a court of appeals composed of eight judges, but does not define its jurisdiction nor enter into the details of its organization; and in the absence of an express declaration to that effect, it is not to be intended that the framers of the constitution designed to abrogate the great and solitary rule which disqualifies a Judge from acting in the cases referred to. There is so much reason and fitness in the rule, that nothing short of a solemn and expressive declaration of the sovereign will ought to be deemed sufficient to abrogate it. In the absence of such an expression in the constitution, it seems proper to hold that the jurisdiction conferred on the Judges of this Court in general terms, is subject to an implied exception in favor of the operation of the rule by which they would be excluded from sitting in cases where they may be interested or related to the parties. Such an exception is implied under the most comprehensive grant of jurisdiction by statute; (5 Coke's R. 1185; Wingate's Maxims, 170; and I

perceive no reason why it should not be, under a constitutional grant of power."

Mr. President, what is there said of interest in the Judge, applies directly to the cases which are assigned as cases of interest, and what is there said of interest and consanguinity applies all here, and the whole reason of it, against sitting on causes where the Judge has been employed as counsel, for that is a species of delegated interest.—There are to that charge some six or seven specifications, the detail of which I shall not go into.

[Mr. Ryan read the fifth article.]

Here again is a tampering with money—the money of suitors in the Court, which is indecent, which is scandalous, which is dangerous. It often happens in the progress of all kinds of suits that money is paid into the Court. The law requires in the absence of any special direction upon the subject, that the money shall be in the hands of the clerk, and it is indecent, it is scandalous, it is dangerous, for the Judge on the bench of that Court to have control of that money, or to tamper with it. I said it was not only scandalous and indecent, but it was dangerous; because it may very well give an interest for the postponement of suits, or in the direction a suit should take. Long ago, Mr. President, that very matter of tampering with the monies of the Court was held to be a source of judicial offence. In the case of the Earl of Macclesfield we read the twentieth charge:

"That the said Thomas earl of Macclesfield, whilst he continued in the office of Lord Chancellor of Great Britain, in breach of the trust reposed in him, and contrary to the duty of his office, did, at several times, borrow and receive of some of the masters of the said court, several great sums of the money belonging to the suitors of the said court, deposited in the hands of such masters, and did make use thereof for his own private service and advantage, so long as he had occasion for the same."

Precisely the charge which we make herein substance.

[Mr. Ryan read the sixth article.]

That charge involves not only a direct violation of the statute I have read, but without any statute involves the same general principles running through most of those charges. It involves the necessary absence of that pure, high minded, upright impartiality, which is the very boast of the administration of justice. No judge will step aside from the bench upon which he sits and advise with persons who are suitors, or who are about to become suitors, and return to the bench, and sitting there, administer justice impartially in those

suits. There are, Mr. President, under that and one or two kindred heads, a great number of specifications, which, if true, establish a confirmed habit, confined to no time—confined to no place, but pervading the whole term of his office, and the whole circuit. It is impossible to resist the conclusion that if these charges are established here in proof, the administration of justice in the second circuit has been wofully partial, wofully one-sided, and greatly wanting in that pure uprightness which should belong to the bench. There is one specification in this Article which I cannot help making a passing remark upon. It is the first specification. The history of that cause I suppose is known to the whole court. It was a proceeding by the Attorney General to call the Wisconsin Marine and Fire Insurance Company to account for the exercise of franchises not conferred by its charter. The suit was commenced in Washington county. The corporation was located—as all the world knows—in Milwaukee county. Mr. Mitchell will testify that his counsel employed in that cause advised him, that under the law of this State, upon various principles of law, the court of Washington county had no jurisdiction in the cause, and advised him not to obey any injunction that should issue. He communicated to Judge Hubbell the advice received from his counsel, and intimated his intention to follow that advice of disobeying the injunction if one should be issued. Why, I cannot tell; what was the inducement to interfere in that cause I do not know; Mr. Mitchell had consulted his retained counsel—they had advised him upon mature consideration that his best course was to disobey and disregard the injunction; whether the judge of the second judicial district thought that advice well or ill-founded, I am not able to conjecture; I only know that he stepped down from the bench, below the level of the practising bar, and volunteered his advice; but, sir, he volunteered it with a promise which the retained counsel of the institution could not give. They advised as they did because the process of injunction would be void; he gave his advice, but he made it cheap by promising to dissolve the injunction if one issued. The judge, stooping down from his high position, was enabled to say, "Yes, obey the injunction; that will cost you nothing—I will dissolve it. Let the judge of the third circuit issue that injunction; I volunteer, here, off the bench to dissolve it. I tell you the obedience will cost nothing." Here he was, advising in the street as a lawyer, and giving force to his advice by saying, "I will dissolve the injunction." I wish, sir, I could practice law with that potency of advice. I say, sir, I could not conjecture a motive, but one strikes my mind—that that wealthy institution should

owe nothing to its counsel, but should owe all to the judge of the second circuit, and should appreciate the obligation.

[Mr. Ryan read the seventh Article.]

That charge is so like some others of a similar character that I shall not stop to comment upon it.

[Mr. Ryan read the eighth Article.]

I shall not comment on that charge either. There is no man in this room, if that charge be true, who has a wife, a mother, a sister, a daughter, who will not appreciate it.

If that charge be true, no man needs a comment upon it. I may say, on behalf of the committee of managers, that the proofs upon that Article may fall short of the charges, because some of the ladies who testified before the committee, have since then left this State with singular and somewhat suspicious unanimity, and that, too, since they were subpœnæd.

[Mr. Ryan read Articles nine, ten, and eleven.]

These three charges, with the sixth and seventh, are of a very kindred nature. Connected with these last charges are several specifications, all showing a general habit of partiality; and if all these specifications, or any considerable portion of them, be here proved, I think it will satisfy this Court, or any human mind, that here has not been merely error, but a habit pervading the whole office of the judge, and gross partiality in the whole administration of justice.

Mr. President, did I say well this morning, when I said that that was a serious array of charges? Did I say well when I said that that body of charges would outweigh any body of charges against any judicial officer in this county of whom you ever read, or of whom any one in this Court did ever read or see? What have former impeachments in America been upon? Judge Chase was impeached for the mere arbitrary and oppressive exercise of judicial power; Judge Pickering the same to some extent, together with habitual intoxication and profanity extending to the bench; Judge Addison for refusal to allow a side judge to charge the grand jury; Judge Peck for oppressively exercising power against a person in contempt; and all these things held to be solemn matter of investigation; and in two cases out of four were proved and conviction followed. And all impeachments in this country have been of the same character. I say, take Chase, Pickering, Peck, Cooper, Addison, the three Judges of the Supreme Court of Pennsylvania—take all the Judges who have been impeached in this country, put all the charges against them into one scale, and put these charges into the other, and these will weigh them down

as lead weighs down feathers. What do these charges in gross amount to? The judicial hands contaminated with a bribe; the judge sitting upon the bench upon his own causes; the feed attorney presiding in Court, in solemn mockery of the purity of justice; the judge's palm itching constantly for the money of suitors in Court; the solemn provisions of the criminal law bent and broken to satisfy his personal and arbitrary will; the Court a place solicited in favor and not approached for justice; worse than all, the judgments of the law doled out as the price of prostitution.

And yet the plea of the judge sneers at these charges. He will not confess or admit the sufficiency in law of any or all of the charges or specifications for the purposes intended. Is it really true, that the judge of the second circuit sees nothing in all this array of accusation, in all this array of imputed guilt, which really ought to demand an investigation of his conduct, or which, if true, ought really to remove him from his office? Is that true, can that be true, can it be, Mr. President, that there is any man in this age, in any station in life, a man of heart so unclean, of imagination so perverted, that the magnitude of these charges cannot impress, not depress? Is it in the mind or heart of any man to say, that if these charges be substantiated here in proof as they are made, the judge who is so unfortunate as to have been guilty of them ought to continue to sit upon the bench? To put the case in another light—suppose that in the place of this plea here, we had the demurrer which is suggested in this plea, and suppose this grave court, this solemn political tribunal, had said these charges do not amount to matter of impeachment, and you cannot remove the accused upon them—Judge Hubbell, go without day. If that had been the judgment of this court upon a demurrer, what would have been the judgment of the world? What the judgment of all decent human sense? What the sentiment of human justice? What the opinion of this state of its political tribunal? And yet, we are told that the magnitude of these charges, as amounting to a matter of impeachment, is not confessed or admitted. If that be the real sentiment of the judge, as set up in his plea, if he returns to the second circuit, God help that circuit. If there is no hope for the second circuit in this tribunal, there is no hope for it but in the providence of God.

And while, Mr. President, I am alluding to this plea, I may say I never was more astonished than when I first saw it. In the course of my little reading, I have come across but one single plea like it, and that was followed by immediate conviction. In all the other impeachments, the impeached judicial officer —for my reading upon the subject of impeachment has been mainly judicial—

the officer was glad to spread his defence along with the charges before the world, and I know and recollect well that that was the expectation here; and when I received this pamphlet by mail, I never was more astonished than to see the felon's plea, "Not Guilty!" rather a denial of proof than a denial of guilt.

Mr. President, the Assembly of this State, upon the evidence taken before it, in the course of its investigations, believing the administration of justice in the second circuit to have been corrupt, prefer these charges before this court. The Assembly appeals to the evidence which will be adduced for the truth of these charges, and appeals to this court for judgment, truth, right, justice. The Assembly of this State commits the rights and injuries of the second circuit to the conscience of this court. It was said in the beginning that the issue was a very, very solemn issue—conviction will be a fearful result to the accused; but believing, after mature investigation, that the charges are true, the Assembly is of the opinion that the burden must lie either upon the defendant or upon the state; that if he does not bear by conviction the scandal, the disgrace, the unhappiness of proved guilt, the scandal, the disgrace and ruin must rest upon the state. The Assembly ask for no more than justice, but the Assembly ask for justice.—The assembly prosecutes here as its duty. The Assembly prosecutes not in hate but in honor. Upon this court rests the final responsibility, and this court will show, let the result be what it will—I speak for the managers and myself—I feel confident that this court will show an example to the state of a high, upright, honorable, uncontaminated administration of justice, and that example, sir, in some parts of this state is needed. If the defendant be innocent—unless his guilt be brought home to him, God forbid that one hair of his head be dishonored; but if guilty, God forbid that one guilty act should escape the punishment which is its due.—The Assembly, then, stand here for judgment, asking that justice be done—asking no more than justice, and expecting no less than justice.

Mr. President, it will be proper for me to state that in the order in which I have proceeded, I have opened the whole of these articles at once, contrary to a common rule of opening article by article; I have done so to save time, under the direction of the Committee of Managers. The other course is the most dilatory and tedious course. In following up these articles in proof, the Managers will be very glad, if the witnesses are in attendance, to take up article by article, and prove one at a time. It will be impossible to do that entirely, but we will follow that course as nearly as possible.

I thank you, Mr. President, and through you the Senate, for the patience and attention with which I have been heard.

At the conclusion of Mr. Ryan's argument, Mr. Knowlton stated that the counsel for the defence would reserve their remarks, and would not open their defence until the prosecution rested.

EXAMINATION OF WITNESSES.

CHARLES LUM, was called and sworn as a witness to the charges contained in the third Article.

Witness. I am Clerk of the Circuit Court of this county. These books are part of the records of the Circuit Court in this county. These are papers filed in the office against James M. Haney. This record book is a journal of the proceedings of the court in such matters.

Mr. BARBER. We propose reading the indictment in that case as the first paper.

Mr. RYAN read the indictment and also several entries relating to it in the records of the court.

GEORGE B. SMITH, sworn. Were you District Attorney, in Dane county, in April 1851? I was. Do you recollect the trial and conviction of James M. Haney? I do. What took place in relation to that conviction, between you and Judge Hubbell? As the record shows, Mr. Haney was tried and convicted, and the verdict of the jury was 'guilty,' in the manner and form as charged in the indictment. The next day something was said, perhaps by his counsel as to his being fined, instead of being sentenced to the penitentiary. The next day or the next day but one, I was in Judge Hubbell's room. Whether he sent for me or not I do not remember. At all events the subject of Haney's conviction was mentioned by the Judge, and he remarked that Mr. Thompson felt a good deal of interest about this man Haney, and that he wanted him to fine him if he could do so according to law. I remarked that I had heard from him or his counsel that he wanted him fined. I said I did not see how it could be done. I called up in the evening according to appointment. I said to Judge Hubbell, after we had examined the law, that I did not see how he could do it. He said to me, he did not see how he could do it either. Some other conversation was had upon the subject. The next day Mr. George P. Thompson came to me with Beriah Brown. He met me on the stairs and said to me—

Mr. KNOWLTON. We do not object to your conversation with Judge Hubbell, butwe object to your conversation with other individuals.

Mr. SMITH. Very good. The morning of the day when Haney was sentenced—and by reference to a little book, that I always carry, I see I cannot tell what particular day the sentence was on—but at all events, on the morning of that day, Judge Hubbell called me up to the desk from the bar and said to me, I do not know what to think about fining Mr. Haney, or not. And before the conversation concluded, he said I have about made up my mind to fine him one hundred dollars. What do you think of it? I said I did not know, but if he was fined at all, a hundred dollars seemed to me not enough. The

Judge asked me then whether I thought the people would be satisfied with the sentence. Well, I expressed my feelings to him as I did to the counsel, that I thought it a harsh, imprudent act, but I did not know of but one way to act on the subject. The law provided one means. I have a faint recollection of saying that I did not know whether the public would be satisfied or not. I think I did say I thought a fine of two hundred dollars would be a sufficient punishment to him, all the time however saying that I did not see how it could be done.

Soon after this he called Mr. Haney up, and did fine him two hundred dollars. This is all the conversation I have had upon this subject, either before or since that time. In either of the conversations which you had with Judge Hubbell, did he ask you to assent to the fining of Haney? I don't think he did. I was asked to assent to it, but not by Judge Hubbell. In either of these conversations, did Judge Hubbell mention to you that Mr. Thompson wanted him fined? Yes, sir. The first mention he made of the subject he says to me, either your friend, or our friend, has a great anxiety about Mr. Haney. He wishes me to fine him, if I could according to law. I said I have heard so; and thereupon we talked about it a little, and he said, won't you come up to my room this evening? I said I would, and did go up; and we examined the several statutes as to the power of the court to do that.

Cross Examination by Mr. KNOWLTON.—Do you recollect whether all the conversation you had with Judge Hubbell was previous to the sentence being passed, or was some of it afterwards? I recollect that all that I have detailed occurred before the sentence. I am not certain but that some things may have been said after that time. Can you tell whether the remark in relation to the people being satisfied if he fined him, was before or after the fining? My recollection is distinct, that it was while I was with him there in the evening examining authorities. We talked about whether it was fair and legitimate, and, in the second place, whether the people would be satisfied with it. I am positive this conversation was before the sentence, because I do not remember of speaking to Judge Hubbell since that evening, except to make a mere casual remark. The court was open and in session when he called me up to his desk and he very soon after called Haney up, and sentenced him. Mr. Botkin and Knapp, and Collins, I think were there. It is my better recollection that as the Judge told me what he intended to do, I went back to the window and met Col. Botkin, and told him what the Judge had said. I mention that as a confirmation of the time. It seemed to be a question whether they would have the case taken up on the bill of exceptions of the Supreme Court for the motion in arrest, or whether they would be satisfied with sentence by fine. I told them what the Judge had told me, that they might take their choice between the two alternatives. Do you recollect that during the progress of the trial and before sentence was pronounced it was objected that that was not an indictment under the 35th section of the statute? I remember that it was discussed. A great many objections were urged, all of which were finally overruled. I contended at the time that that was an indictment of assault with dangerous weapons and with intent to kill. The other side contended simply that it was double—first assault, and then assault with intent to murder. I would not undertake to say what Mr. Knapp did or did not argue upon these motions of arrest. I was District Attorney till January, 1853, after the

ntence. I never took any step to set that sentence or judgment aside, on the round of illegality. In explanation of that I would say, I had done my duty; was the duty of the court to sentence, and not mine to disturb the sentence. took it that the Judge had reasons sufficient for himself.

Direct examination resumed. When you stated in your cross examination at you had done your duty, did you in the course of your conversation with dge Hubbell, make that remark to him? I don't think I did. I had no ason to do so. I did make it to those interested in the matter, but not to e Judge. I made this remark to Judge Hubbell—"you must do, Judge, as u think you have the power or right to do." I didn't come out and say have done my duty and you must look out for yours. I said you must do you think the law warrants.

Senator STEWART asked the following question in writing: Did you at the me of the sentence have some doubt that the sentence of imprisonment was e only sentence the court could legally make?

Mr. SMITH. No, sir. I had no doubt.—I examined it with a great deal of re and came to that conclusion.

Mr. BARBER. Mr. Smith is a witness to sustain other Articles in this cause, ut the other witnesses on those Articles are not now present and we cannot roceed upon them. If we discharge Mr. Smith now we do not wish to be recluded from examining him in relation to those Articles when they come up. We wish to claim the privilege of recalling him as to other Articles, but othing farther in relation to this Article. The Managers would like some in- ication from the court whether the examination of each witness in relation to ll the Articles; or, in order to proceed more orderly after examining him in elation to one Article we may recall him. If we call each witness in relation o all the Articles upon which his testimony would bear, it will not appear elevant and not appear in that orderly manner that it would do if the ourse we propose should be pursued.

Mr. KNOWLTON. In relation to this matter. If it is a legal right they have, re would as soon they would call this witness at some other time as now, and o of the other witnesses, but we understand it to be a rule that when they have xamined a witness in chief and passed him over to the other party, then the ther party can only re-examine him in relation to matters to which he has lready testified—they cannot go into new subject matter. They must be con- ined in the re-examination to the matter of the cross examination. It is not hat we wish to be captious; we wish to dispose of this case as soon as possible nd at the same time conduct it conformably to the rules of law. We think hat it is an unbending rule of law.

The PRESIDENT. If there is any proposition to be made by the managers, t is necessary to state it in writing.

Mr. RYAN. While one of the managers is reducing the proposition to writing, will say a few words in reply to the remarks to the counsel for the defence. irst, in regard to the trial of impeachment: I remarked this morning that there re two courses which are pursued. Both have been pursued in different in- tances. One is to open each article and then to submit the testimony upon it eparately. Another is to open the art cle altogether, and submit all the testi- ony of each witness upon all the articles. We have opened all the articles, ut propose to submit the testimony upon each article separately until we have

drawn out all the testimony we have upon that article. Since we have the righ of precedents, it would seem that we might be allowed to proceed upon eacl article separately and luminously.—There are several who are witnesses to a great many different articles. It will be very embarrassing and very confusing to take all the testimony we expect from a witness all at once where it relate to separate matters. With regard to the general rule of law of which the gen tleman speaks, I do not understand any exorable rule of law about it. I under stand it is better to take all testimony in chief, from one witness at one time, in ordinary tribunals, but I never saw any rule enforced which prevented a wit ness from being recalled after he had been examined in chief. I have seen witnesses many times recalled in different stages of trials and examined in re lation to new matter. We only wish, as I presume Mr. Knowlton would wish to have the question submitted in the beginning.

Mr. KNOWLTON. I think I am not mistaken as to the positive rule of law I think the rule is now well settled as I have stated it. We only ask that the rules of law be adhered to in this matter. I think the gentleman cannot fail to remember that that question was considered with a great deal of care on one occasion in the Supreme Court of the United States; when they examined the various rulings of Courts, and they lay down that rule of law. In relation to impeachments, I understand that the rule is the same as in trials at law. I think I am not mistaken in relation to these propositions.

The Committee now moved that the Managers have liberty to call witnesses separately at several times on the several propositions.

The vote was taken upon the proposition, and it was adopted as a rule, unanimously.

Mr. KNOWLTON. I have two questions which I wish to submit to the court, two legal propositions which as counsel for the defendant, I am not at liberty to waive. I have prefaced these propositions in this manner :

Inasmuch as these charges and specifications have been reported by a Committee of the Hon. the Assembly, and inasmuch also as the Hon. the Assembly has in form preferred such charges as grounds of Impeachment, and the same in such form, having been published to the world, the Respondent desires, for himself, in vindication of his character, a trial upon each and all of them. But as it is a well established principle of law, that jurisdiction of the *subject* matter cannot be conferred by the consent of parties, especially when the question is of Constitutional jurisdiction. And as he conceives that this principle extends to all events and purposes, and inasmuch as his constituents and the State have a right to his judicial services, and are interested in continuing such services, he submits to the Court to determine, without argument on his part:

1st. Whether this Court has the Constitutional jurisdiction to act upon charges of impeachment preferred by the Hon. "The Assembly:"—and

2d. If it has such general jurisdiction, whether that jurisdiction must be confined to charges of offences committed, or alleged to have been committed by the Respondent in, or during the exercise of the office which he *now* holds, or whether it can consider charges for offences, or crimes committed, or alleged to have been committed during the existence of term of office, e ther as a Judge of the Circuit or Supreme Court, after *such* term has expired.

Mr. DUNN. Mr. President, with a view of giving an opportunity to the

members of the Court to examine the propositions just submitted, I move that the Court adjourn to 9 o'clock to-morrow morning.

Whereupon the Court adjourned.

SEVENTH DAY.

TUESDAY, June 14.

MORNING SESSION.

On opening the Court, Mr. Ryan said:

On behalf of the Managers of the Assembly, I beg leave to state that it is their desire that the propositions submitted by the counsel for the defence, last evening, should be disposed of by the Senate. These propositions have, as every member of the Court is aware, a very extensive bearing on the whole transaction. If one of these propositions is correct, the sooner this trial ceases the better. It will be but a waste of time to proceed farther. In regard to the other proposition, it covers as broad a ground, although not covering it like the first. That ground. It is also very desirable and important that the Senate should determine at once, because a very large portion of the testimony, half of it probably, may be dispensed with, and the expense of it cease. I do not know, Mr. President, whether these propositions convey entirely to the understanding the grounds upon which they are founded. I think I have obtained some knowledge of those grounds from Mr. Knowlton, and I understand them to be that under the Constitution of this State, according to the first proposition, the Assembly has no jurisdiction over this impeachment. The article in the Constitution upon which this proposition is based mentions the House of Representatives, meaning the Assembly. That I understand to be the point. I understand the second proposition to be, that Judge Hubbell is answerable only for acts done during his present term, and for nothing done during his former term. It is very important that these propositions be disposed of now. We are prepared to dispose of them; and although Mr. Knowlton proposes to submit them without argument, I think he ought to present the views of them held by the defence to the Court. We are prepared on both points, and desirous to be heard on both points.

Mr. KNOWLTON. Our proposition is as we stated it, to submit these points without argument. These questions, will, of course, come up under the discussion at the final argument, but for the purpose of determining what evidence should be received, we thought we would submit them for your disposal now.

Mr. RYAN. If the defence does not see fit to argue their view of these propositions now, the Board of Managers think them of too much consequence to be passed over in mere silence; and if the Court please, we will present our views and cite some authorities. If the Court desire to hear us, we are prepared to make such remarks upon both propositions as we deem necessary to be made.

The PRESIDENT. If the questions are to be discussed at all, the present, perhaps, would be the most proper time.

Mr. RYAN. Then, Mr. President, I shall say at once, what little I have to say upon these two propositions.

The Constitution of the State of Wisconsin, in the Legislative article, says: "The Legislative power shall be vested in a Senate and Assembly."

I will now read that part of the article which calls the lower House the House of Representatives:

"The Court for the trial of Impeachments, shall be composed of the Senate. The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment."

I suppose that variation of language between these two articles, is the gist of the point which is here submitted.

We suppose it to be a very simple matter. It is stated in our history, that previous to this constitution, a constitution had been framed, submitted to the people, and rejected. Immediately after that, another convention was held to remodel that former constitution, and they framed out of it the present one. In the former constitution the two houses of the legislature were called "Senate and House of Representatives." As it seems to me, in reporting to that convention the article on the judiciary, the terms used in the former constitution were preserved by the committee which reported the article on the judiciary to the second convention; and, following the terms of the old constitution, they used this language, "that the impeaching power shall be in the House of Representatives." Article vii. of the rejected constitution was on the judiciary, as the seventh article in the present constitution is on the judiciary. I believe the first section is verbatim alike, or very near it; and I believe both articles are alike throughout in both constitutions.

It is very evident, then, how the discrepancy of names has crept into the present constitution. I imagine, Mr. President, that it is a mere discrepancy of names, which amounts to no more than this, that the lower house is, by a clerical oversight, called by two names in the present constitution. In one part it is called "Assembly," and in another part "House of Representatives;" and the substantial question is, whether one body so called in one part, Assembly, and in another part, House of Representatives, is the same body; or whether this present constitution really contemplated three legislative bodies. I don't like to say any thing disrespectful of any proposition made by the opposing party in this cause; but if the court please, it seems to me that that distinction and that objection, comes from very much that description of person that Mr. Webster called *capta verborum*.

I apprehend the objection would be just as good, that no statute of this state is obligatory upon its people, because it had been passed by the lower house, for the reason that that house was called in one part of the constitution *the House of Representatives*, and in all other parts *Assembly*. That is all the managers deem it necessary to say on that point.

In regard to the second point, if it please the court, I think the precedents and authorities settle it against the proposition which is here made, and all of them.

Rawle, in his works, says, "from the reasons already given, it is obvious that the only persons liable to impeachment are those who are or have been in public office;" all executive officers, from president downwards, are included in this description. The question that is here raised, was attempted to be raised

in the impeachment of Blunt, but it was not decided. The only point decided there was, whether a senator of the United States was a civil officer within the meaning of the constitution.

Judge Story quotes the language of Mr. Rawle:

"Another inquiry, growing out of this subject, is, whether, under the constitution, any acts are impeachable, except such as are committed under the color of office; and whether the party can be impeached therefor, after he has ceased to hold office. A learned commentator seems to have taken it for granted, that the liability to impeachment extends to all who have been, as well as to all who are in public office. Upon the other point, his language is as follows: 'The legitimate causes of impeachment have been already briefly noticed. We can have reference only to public character, and official duty. The words of the text are 'treason, bribery, and other high crimes and misdemeanors.' The treason contemplated must be against the United States. In general, those offences which may be committed, equally by a private person, as a public officer, are not the subjects of impeachment. Murder, burglary, robbery, and indeed all offences not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding; and neither house can regularly inquire into them, except for the purpose of expelling a member.

"It does not appear that either of these points has been judicially settled by the court having, properly, cognizance of them. In the case of William Blunt, the plea of the defendant expressly put both of them as exceptions to the jurisdiction, alleging, that, at the time of the impeachment, he, Blunt, was not a senator, (though he was at the time of the charges laid against him,) and that he was not charged by the articles of impeachment with having committed any crime, or misdemeanor, in the execution of any civil office held under the United States, nor with any malconduct in a civil office, or abuse of any public trust in the execution thereof. The decision, however, turned upon another point, viz., that a senator was not an impeachable officer."

The precedents, if the Court please, are also with us. Warren Hastings, Governor General of India, resigned that office on the eighth of February, 1785, and embarked for England.

The first trace of a threat of impeachment which I have been enabled to discover from an examination of the books, was in June 1785. Mr. Burke moved an inquiry into his papers in 1786—more than a year after his resignation.

The charges were made by him on the 4th April, 1787, some two years and upwards after his resignation; that trial lasted upwards of seven years, and all that time, it was never questioned that Mr. Hastings was not subject to impeachment long after the expiration of his term of office.

Lord Macclesfield was removed from the office of Lord Chancellor, January 7, 1725.

This trial of Lord Macclesfield, begun on the sixth of May, 1725, and lasted thirteen days; so that upon that trial, the Chancellor was actually removed from office before the first steps towards an impeachment was taken.

Lord Bacon was Chancellor when the articles of impeachment were prefered against him, but he resigned that office between the preferment of the articles of impeachment against him and the trial; but the trial proceeded against him when he had ceased to be Chancellor, notwithstanding.

After the preferment of articles of impeachment, the book proceeds:

"Still a difficulty remained further, while he retains the great seal, for by the rules and customs of the House of Lords, a defendant prosecuted before them, is to receive sentence upon his knees at the bar, and the Lord Chancellor, if present must preside on the wool-sack and pass the sentence. This embarrassment was removed on the first of May, when the King, finding all further resistance hopeless, sent the Lord Treasurer, the Duke of Lenox, the Earl of Pembroke, and the Earl of Arundle, to demand the great seal. They found Bacon confined to his bed by illness; and when they had explained the object of their mission—hiding his face with one hand, with the other he delivered to them that bauble for which he had sullied his integrity, had resigned his independence, had violated the most sacred obligations of friendship and gratitude, had flattered the worthless, had persecuted the innocent, had tampered with judges, had tortured prisoners, and had wasted on paltry intrigues all the powers of the most exquisitely constructed intellect that had ever been bestowed upon any of the children of men."

So far, the precedents which all show that after these officers were entirely ousted from their office, entirely ceasing to be public officers in the capacity in which they were impeached, how is it here? the Judge has been continuously Judge of the Second Circuit since the first judicial election in this State. There was no time since that election, that he was out of that office. It is true, his first term expired on the first of January 1852. He then commenced a new term; but there never was a moment when he was out of the office; and although he has held it by two different tenures or terms, yet it has been one continuous whole, and if he might have been impeached after he held the office, it is plain to me that he might be impeached for anything done during his former term. It would be absurd to say that upon the 31st of December, within five minutes of midnight, the Judge of the Second Circuit could have taken a bribe, could have sold justice, and when the clock struck twelve, could have passed out of that term of his office without punishment; and could go on six years of his new term in spite of his mal-administration of his first term. We hold that he is responsible for every act done that is charged upon him since he has been Judge of the Second Circuit; and there is in law as in reason and in justice, no distinction between the acts he has done prior to 1852, and those which he had done or performed before.

There is an additional reason. Upon conviction upon an impeachment the sole consequence is not removal from the office. I have been arguing that any act which subjected the party to removal from his office, ought to subject him to that removal whether committed on his present or former term; but there is another reason. The state is entitled in the judgment of this Court to the statement of disqualification. The sole judgment is not mere oustment from the office. The judgment may go farther and amount to a perpetual disqualification from holding office; in other words, the constitution has provided that there shall be a judgment. Upon all cases of conviction upon impeachment there shall be a judgment ofremoval from office. The constitution has left it to the discretion of the courts for impeachments to say whether there shall not be a condition of judgment of disqualification from holding office, whether the acts are committed within the present or former term; and if I should be wrong upon all the other propositions I have submitted here, it might well be

that there are acts committed by the judge of the second circuit within his present term of office, which could operate only to the extent only of removal from office, but there might be acts during the former term which ought to subject him to perpetual disqualification. With this explanation, made as briefly as I have been able to make it, the Managers instruct me to submit the question to the Court.

Mr. KNOWLTON. I think the counsel is mistaken in the case of Blunt. I have a report of this case before me which tells a very different story. The Court can see by referring to page 315 of Wharton, the following statement:

"*Monday, January 7.*—On motion to agree to the following resolutions:

"That William Blunt was a civil officer of the United States, within the meaning of the Constitution of the United States, and therefore liable to be impeached by the House of Representatives.

"That, as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a senator of the United States, his plea ought to be overruled.

"After debate, on motion, the court adjourned until 12 o'clock to-morrow.

"*Thursday, Jan.* 10.—The court proceeded in the debate on the motion made on the 7th instant, and which had been under consideration every day since, and, on the question to agree thereto, it was determined in the negative. Yeas 11—nays 14.

"*Friday, Jan.* 11.—On motion it was determined that

"The court is of the opinion, that the matter alleged in the plea of the defendant, is sufficient in law, to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed. Yeas 14—nays 11."

The correctness of this is undoubted, and Mr. Rawle, and for that matter Mr. Story, too are undoubtedly mistaken.

Mr. RYAN. Mr. President, I apprehend, although I have never seen the report of the trial in this book, I have seen it in the Journal, Mr. Blunt had plead a great many things. He had plead that he was not a civil officer within the meaning of the Constitution. He had also plead that he had ceased to be a Senator, he had plead that articles of impeachment could not be preferred for acts that were not indictable crimes. He had plead divers other matters. The resolution that he was a civil officer within the meaning of the Constitution, was rejected, and without passing on any other single resolution raised by his plea, the next resolution was adopted, that the impeachment be dismissed, that is to say, the impeachment was dismissed upon the rejection of the other resolution, that he as a Senator, was not a civil officer. It seems to me then, that the construction put upon this case by the writers I have quoted, is a correct one. The commentary of Judge Story is the universally received commentary on that case.

Mr. ARNOLD. I do not rise for the purpose of submitting any argument upon the propositions now before the Court. I merely wish to present a statement of the propositions and the object for which they have been submitted. They are undoubtedly important, even fundamental, and for that very reason I feel it to be my duty, notwithstanding any disclaimer on the part of the respondent, here to call the attention of the Court to the real meaning of these propositions. I greatly fear that the arguments submitted by the learned counsel for

the Managers may have caused them to be misunderstood or misappreciated, and I wish to request the Court to critically examine the matter before coming to any decision. The respondent in this case, has been impeached by the Assembly of the State of Wisconsin. This has been done without his concurrence and without any ability, on his part, even if he had the wish to do so, to interpose. But his position remains the same.

He is still a judge. He owes in that capacity duties to the public. He may be called upon to perform them. He certainly will be if acquitted, or even if he should be unconstitutionally or illegally impeached. It was for that reason that his position has been delicately hinted at in the propositions filed here. He has been willing to be tried, but it has been thought right by us to submit these propositions in the outset, and therefore without argument I proceed to state what I consider their import and meaning. I do not agree with the counsel for the managers, that the first one of these propositions is either trivial or contemptible. I do not regard it as unworthy the most serious consideration of this court. The learned counsel is undoubtedly right in his statement as to the manner in which the article in the constitution came into it. It was undoubtedly copied from an older constitution with which that learned counsellor himself, I believe, was very conspicuously identified. But the old constitution vested the legislative power in a senate and house of representatives. The present constitution vests that power in a senate and an assembly, and by reference to the constitution I believe he will find that the word assembly is used in every other instance, and very frequently, excepting in the single article on the judiciary, which is under consideration. Now is this without a meaning? In England an impeachment must be made by the house of commons. In our country the lower house of legislatures is sometimes called a house of commons and sometimes a house of representatives. If the power of impeachment had been given to the assembly for instance, and the assembly had found an impeachment, could it be contended that it had been properly found, when the constitution prescribed that the house of representatives should have the impeaching power. The learned counsel, to put a strong test, has said that it might be just as well contended that because the lower house being termed in one part a house of representatives, and in another part assembly, all acts passed by that house were unconstitutional. I do not perceive the force of this, nor of the identity of the two names. They are distinct terms. Each has a special meaning in the history of the legislature and constitution. Our constitution provides that all laws shall be enacted by a senate and assembly. Suppose the enacting clause should read: Be it enacted by a council and house of commons, so and so; would that be a legal enactment? Certainly not. An act to be legal must be passed by a senate and assembly.

As to the second proposition, that a judicial officer cannot be impeached for an act done while in office after the expiration of his term of office, the learned counsel has rested that not upon argument or construction of our constitution so much as upon authority, and has alluded to numerous cases in which it has been held, that in every instance in England where the question has been raised, the offender has been subjected to judgment after his term of office has expired. Well, now, what the penalties in cases of impeachment in England may be, I do not know, but I know they differ indifferent States. The penalty is different in this State from the penalty imposed by the constitution of the

United States. There, I believe, it is disqualification from office or something less. That is the extent to which the judgment can be carried. Here our constitution is limited. Allow me to read this statute deliberately, and I wish every member of this court had that statute in his hands while I read it. It seems to me that it amounts to a demonstration of the truth of our second proposition:

"Judgment in case of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit, or trust, under the State; but the party impeached shall be liable to indictment, trial, and punishment, according to law."

There is not even a comma between the word office and disqualification, that is to say, the judgment may be and must be one of two things, first, removal, or, in addition to that, disqualification to hold office; and not by the fair reading of it authorizing the construction, but conclusively precluding the construction sought to be established on the part of the prosecution. There may be a judgment of removal, or removal together with disqualification; and these are the only two judgments that can be rendered by this court. Now, can such a judgment reach an officer whose term of office long ago expired? There is no office to remove him from. But there may be attached to an impeachment, the additional penalty of incapacity to fill any office in this state. But, as I said in the outset, I did not mean to make an argument, but only to bring out the full meaning of the propositions.

Mr. DUNN moved to amend the propositions offered by the defence, by the adoption of the following resolutions:

Resolved, That this court has the constitutional jurisdiction to try an impeachment preferred by the honorable "The Assembly of the State of Wisconsin."

Resolved, That this court on the trial of the impeachment now pending, have jurisdiction to inquire into offences charged to have been committed as well during the former term of office of Levi Hubbell, Judge of the Second Judicial Circuit of this State, as into offences charged to have been committed during the present term of his said office.

Mr. WAKELEY. I do not know but every other member of the Senate, is prepared now to vote upon these resolutions just introduced by the Senator. For me, I am not willing to vote upon them now, unless compelled to do so by the resolution of this body. Mr. President, this is a Court of ultimate jurisdiction. There is no constitutional tribunal in this State, which has power to review our decisions or rectify our errors if we shall commit any; and I believe, sir, as these propositions are fundamental, it is due to this State, due to this respondent, due to the reputation of this Senate, and to the individual responsibility of every member of this Court, that we should not pass upon these propositions, till we have had access to all resources within our reach, and have had an opportunity to take the necessary time to enlighten ourselves.

Mr. DUNN. I will simply say to the Senator, that I am not disposed to force upon the Senate a vote upon the propositions submitted, if any Senator requires time. If, however, the Court is prepared, it could be as well done now as to-morrow.

SENATOR from the third district. I understand that the questions submitted by the Court are debateable, and the questions submitted by the Managers are not debateable. That is the construction as I understand it.

The PRESIDENT decided that no question whether submitted by the Court or by the parties was debateable.

Mr. REED. I am not prepared to vote upon the propositions under the construction the President has just given to the rule. I cannot agree upon that construction of the President, when he says the resolutions of Mr. Dunn are not debateable. For the purpose of having time for consideration upon them, I think we had better adjourn until to-morrow.

PRESIDENT. The decision I have made is important, and I wish a decision made upon it. If an appeal is to be taken, it would be well to do so now, as I would like to have it settled at once.

Senator LEWIS. I would like to inquire what time Senator Wakeley desires for investigation. If the object is to put off the trial for several days, I go against the proposition.

Senator STEWART. I cannot, myself, see the use of an adjournment. The original propositions were submitted last night, and the Senator might have had time between then and this to have come to a conclusion upon them. I apprehend, if we should adjourn, no Senator could get any new light; the counsel on both sides have already submitted to the Court all the light to which the Senators could probably have access. I apprehend the Senator could not be better prepared to vote upon these propositions to-morrow than now. Very few Senators would take the trouble to learn farther than they already know this morning.

Senator DUNN. I beg leave to state my views of the rule. The verbiage is very simple. The question is whether the proposition now submitted by the Senator from Walworth, or one that is based upon the proposition of one of the parties and that cannot be separated from it, is debatable? Now I think these propositions are important for the accused and we should come to a vote upon them without varying their form, and with this view of coming to a direct vote upon these distinct propositions, I varied the rule and submitted the proposition in the form of resolutions, and not of distinct propositions, originating in this Court. I agree that all propositions originating in this court may be discussed, and this rule does not apply to other propositions. But when originated by either of these parties this rule does prevail and govern, and the proposition is not debatable. If any time is needed by any Senator, if any member of the Court says he wishes time, I will withdraw the proposition for the present.

Senator WHITTLESEY. I hope the Senator will not withdraw the proposition.

Senator CAREY. The senate have been proceeding for some time in direct violation of a rule of the Court, and the decision of the President. I rise to a call of order.

Senator DUNN. I withdraw my proposition.

Then came up Mr. Wakeley's resolution.

Senator BLAIR. I would inquire if the decision of the Chair decides that that proposition is not debateable?

PRESIDENT. I so decide.

Senator BLAIR. Before that proposition is put then, I move it be laid upon the table till to-morrow. I would now inquire whether that proposition to lay upon the table till to-morrow is debatable?

PRESIDENT. It is not, sir.

Senator BLAIR. That being the decision, I would appeal from the decision of the chair.

Senator STEWART. I would inquire whether the proposition to appeal is debateable before the court?

PRESIDENT. I should think it was not debateable during the trial of the impeachment.

Senator DUNN. I would ask the Senator from Walworth if he had not better designate some time to which to adjourn?

Senator WAKELEY. I thought the proposition better in the form in which it was introduced, that when the court was ready to vote it would so inform the respondent and managers, and then proceed. If it is thought the proposition had better be modified as to time, I would say until half past two this afternoon.

Senator CAREY. I would inquire, if the Senator anticipates the proceedings to be suspended during that time?

Senator WAKELEY. The Court could either adjourn, or continue in session till the decision of these propositions.

The vote was now taken upon Mr. Wakeley's resolution, as follows:

Resolved, That the Court will take time until half-past 2 o'clock, this afternoon, to deliberate on the propositions submitted by the Counsel of the Respondent, and when ready to pronounce its decision, will advise the Assembly and the Respondent thereof.

And adopted—13 to 11.

Senator CAREY. Since we have postponed the proposition for the purpose of consultation, we must stay here, I suppose, and go it on consultation.

Another Senator did not think so, and moved an adjournment of the senate, which prevailed.

AFTERNOON SESSION.

Mr. DUNN. In order to give distinctness to the propositions offered by the counsel for the defence, I will offer the resolutions which I introduced and withdrew this morning.

The vote was now taken upon the first resolution of Mr. Dunn, and it was adopted unanimously.

The Court then voted upon the second proposition, and adopted it, 19 to 5.

Mr. SANDERS. The Sergeant-at-Arms has returned the attachment that was issued against witnesses, and in relation to one witness he makes the following return:

"I also served this writ on Albert Smith, who refused to obey the same, and threatened that in case I persisted in the attachment, that he would by virtue of his authority as Justice of the Peace of the county of Milwaukee, Wisconsin, imprison me for contempt of his court; in view of which said threats, and in view of this writ extending to some thirty other persons, on some of whom the same had been served, I deemed it prudent for me to avoid a conflict with the said Albert Smith, and consequently he is not present.

JOHN L. SWEENEY,
"June 14, 1858. Assistant Sergeant-at-Arms."

Mr. SANDERS. I do not know but this presents a case of conflict of jurisdiction between this Court and the Court of Milwaukee; and in order to settle the point, we now make the following motion:

The Managers of the Assembly move the Court to issue an alias writ of attachment against Albert Smith, a witness duly subpœnaed to attend this Court, on the part of the prosecution

Mr. KNOWLTON. Before that motion is put, sir, I would submit a matter for the consideration of the Court. It is a matter of some importance, and may avoid the necessity of sending an alias writ of attachment. I have requested a copy of the testimony taken before the Committee of Managers and now before this Court. The Committee has not been inclined to grant it. We now request the Court to furnish us a copy of that testimony. It is very material to us to have it, in order to dispose of this case properly and speedily. We are entitled to it and we therefore add, that there are certain parts of that testimony, that witnesses would swear to if here, that we might admit without requiring the personal presence of the witness. At all events we are entitled to the examination of that testimony to aid properly to submit our defence.

Mr. ARNOLD. Following the suggestion of my associate and in immediate relation to his motion, I wish to say, that I had an interview with Mr. Smith in Milwaukee, and he expressed the very great inconvenience to which it would subject him to attend this Court. I think he told me also that he had personally written or spoken to the Managers, requesting, if it would be possible, to take his testimony before the Committee, instead of his personal presence. I told him if I could examine his testimony before the Managers, and if it was acceptable to us I would accept of that arrangement.

Mr. SANDERS. Mr. Smith made the suggestion to me, that he would like to have his testimony taken before the Committee of the Assembly used in the trial of this cause, without obliging his personal attendance. I do not remember that I made any reply to him; but, on consultation, we came to the conclusion that we could not with propriety use the testimony taken before the Investigating Committee of the Assembly in the trial of the cause. And I do not see the propriety of submitting a copy of the testimony to the Respondent, for the reason that it is a very unusual mode of procedure. It is not customary for prosecutors to hand over their preliminary testimony to the defendant. That testimony relating, as some of it does, to the charges, and some of it not, we came to the conclusion that we could not with propriety submit it to the gentlemen for consideration. Hence, we are obliged to take the ordinary course in such a case, and move for an attachment.

Mr. KNOWLTON, on part of the defence, then submitted the following motion:

In the matter of the impeachment of Levi Hubbell, &c.:

And now comes the Respondent, Levi Hubbell, by his attorneys, Arnold & Knowlton, and moves this Hon. Court to make an order requiring and directing the Committee of Managers of the Hon. Assembly to furnish to the said Respondent, or to his attorneys, a copy of the testimony taken and preserved by the Committee of the said Assembly, by that Hon. body appointed to, and who did take the said testimony as the basis of the said Articles of Impeachment. The order is asked for in order that the Respondent may be enabled to properly make his defence.

ARNOLD & KNOWLTON,
Of Counsel for Respondent.

Mr. Ryan. In addition to what has been already observed to the Court by one of the Managers, I must say, that although we conceive the reasons he stated why these motions could not prevail are sufficient, yet there are other reasons. The Managers understand the testimony to be in their possession under a still existing injunction of secrecy. Another reason which strike sme forcibly is this: In the testimony there is a great deal upon which no charge has been founded, and I think there are obvious reasons why that testimony ought not to be submitted to the other side. If the Court please, I read yesterday from the authorities that a Court of Impeachment is, as to its rules, to be conducted according to common law, as far as it can conform to common law, and in view of this motion, if the defendant, in an ordinary suit, should move that the District Attorney should furnish him the testimony taken in the grand jury room, it would be parallel to this motion. I do not know but such motions have been granted, but I never heard of them. I never saw propositions of this kind prevail, and their prayer granted.

I think we would be authorized, if that motion is to be carried, to move an amendment to it that the defence should submit the minutes of their testimony and grounds of defense to us. If we are to submit to them the foundation of our case, they ought to submit to us the foundation of their case. These, to be sure, are the minutes of testimony, but they are no more so than the minutes of testimony taken in the grand jury room, for the foundation of an indictment.

Another reason is this, if the Court please. I pretend to know very little of parliamentary usage. It is here I suppose my misfortune; but I can pretend to know very little of it. But it strikes me forcibly that, inasmuch as the Assembly, the constitutional body to prefer impeachments, as voted upon and settled this afternoon by this Court, have presented these articles and specifications of impeachments, it would be inquiring into the grounds on which they have acted, to require the testimony which was taken before them to be presented. I have read within these last few days, several cases of impeachment in which the Courts examined several sorts of evidence before them; and in one instance a petition of the citizens to the House was the foundation on which the House impeached a Judge before the Senate. It is in the sole discretion of the House, on what ground to proceed. I do not think the Court in this instance have a wish to look behind the articles of impeachment. For these reasons, sir, I think the motion on the part of the defense ought not to prevail.

Mr. Arnold. I do not know that I have anything to say particularly, in reply to counsel for the Managers, any farther than to justify our own conduct; and lest it should appear to the Court that we have made a very unusual motion, and one that we could not ourselves expect to have granted, allow me to say I do not appreciate the precise similarity of this proceeding to that of an indictment found by a grand jury. There are well known reasons why an ordinary Court should refuse an application of the defendant to authorize him to get access to the testimony taken before the grand jury. In the first place, it might provide the means for the defendant to escape. In the second place, if he should be permitted to know the witnesses, he might entice or spirit them away. Very obvious reasons strike the mind of every person why such an application in such a case should not be granted. But this is not such a case. It has been generally known all over this State, who the witnesses are, who were

subpœnaed to appear before that committee. Their labors have been spread before the world, but we have not been apprized what the testimony of these witnesses was; and not knowing how far we might wish to send for witnesses ourselves, we take this course in order to arrive at that result. The conduct of a Judge, who has been in office for several years, must have extended itself all through the country; and it might disclose itself through this testimony, that a witness in New York, or Maine, or New Orleans, might be necessary to explain that testimony. I know not to what result the gentleman's reading has led him, as to the impropriety of what we here ask for, but I can tell him if he has read the trial of Judge Peck, he must have found that when the complaint against him was, by order of the House, sent to a committee of investigation, he was at once notified of it, and had the privilege of cross-examining all witnesses, that he might thus be at the outset apprized of the proceedings held against him, and afforded an opportunity of knowing what they were—in other words that, being ahigh officer of the government, he might have a fair chance to defend himself. That is all we ask here.

The defence re-called Mr. George B. Smith.

Mr. KNOWLTON asked—At the time the jury rendered the verdict against Haney, was there any recommendation by that court to that jury?

Mr. RYAN. The verdict is here, and in record in the court. We object to any oral testimony to explain it.

Mr. KNOWLTON. During the progress of that trial, and in your conversations with the Judge, to which you alluded yesterday, did you discover any conduct in him that satisfied you that he was acting from improper motives, or from a disposition to do what he thought was right?

Mr. RYAN. I apprehend that how far the judge was actuated by improper motives, rests in the judgment of this Senate, and not for the witness to state. If the witness answers this question, it is really taking the prerogatives of the court and assuming it himself.

Mr. KNOWLTON. I only wish the witness to state whether in point of fact the *conduct* of the judge was such as to actuate him to do other than what was right, and if so, to ascertain what that conduct was, that the court may properly judge of it.

The Senate, by vote, refused to allow the witness to reply to the question.

WILLIAM SANDERSON was now sworn and examined by Mr. Ryan, upon the first Article.

Mr. SANDERSON. I reside in the city of Milwaukee, and have resided there some coniderable time. I have known Judge Hubbell a year certainly, perhaps longer. I have known him by sight a long time. I know there was a case in the circuit court of Milwaukee county, in which Comstock, Chase and others, and myself were defendants. I believe I made the affidavit upon which the attachment was executed in that cause.

Mr. RYAN. Will you explain to the Court what your interest in the suit was, and how you came to make this affidavit for an attachment, in a case where you were a defendant yourself?

Answer. Mr. Cicero Comstock, Leander Comstock, Reuben Chase and myself, were partners in the produce and mill business. We became jointly indebted by having drawn upon the house of Theodore Perry & Co., to quite a large amount, and in the summer of 1851, the Comstocks purchased out the

interest of Mr. Chase and assumed the liabilities of the whole concern. They soon after purchased out my interest and assumed all liabilities and agreed to pay whatever we were liable for, and pay me whatever was my due on settling up the concern. A short time after this took place, they made an assignment, and in the assignment preferred some creditors, excluding Perry & Co., for which debt Chase and myself were jointly liable. A suit was brought to hold the property of Cicero and Leander Comstock which they had assigned, and it was my interest that the debt should be paid out of that property. I saw and had an interview with Judge Hubbell on the subject of that suit soon after it was commenced. I saw him here in Madison. I do not know whether he was holding court here at the time. I did not come here expressly to see him, though I might have thought about it when I came here. When I first saw him I think I asked him if I might see him a few moments; or, if he would be at leisure soon. He was at the time in company and in conversation with some gentlemen, and I think he said he would be at leisure about 12 o'clock. I saw him at 12 o'clock at his room, but some persons were present. I called a second time, however; he was then in his room alone.

Q. Did you speak to him of the suit of Perry against Comstock?

A. I said there was such a suit in his court.

Q. Did you state to him what the nature of the suit was?

A. How much in detail I spoke of it, I don't remember. I told him it was a suit brought by attachment, and I might have spoken of some other facts connected with it.

Q. Did you mention to him the assignment of the Comstocks?

A. Well, I might have done so.

Q. Did Judge Hubbell express any opinion to you; and if so, what was that opinion upon the facts you stated to him as to the merits of the suit, and as to the facts involved in the assignment and suit?

A. I think the Judge said, to sustain the attachment under our statute, required strong evidence.

Q. Did he say anything about presumptive evidence of fraud?

A. Well, I could not pretend to attempt to say, for I might not hit it. I think he said he never had a suit of that kind in his court since the statute was enacted, and that if the suit came before him, he would do justice to the parties concerned. The conversation was short; and I declare I don't remember any thing more that was said.

Q. Did Judge Hubbell express any opinion as to the effect which the facts you mentioned to him involved, as to the effect of proving them?

A. No, sir, he did not.

Q. Did he say any thing to you about these facts being presumptive evidence of fraud, but liable to be explained?

A. I do not now remember. He might, or he might not.

Q. Did you state any thing to him about the position or character of the Comstocks in the city of Milwaukee, and the effect that position might have on the suit?

A. I believe I did. I stated something like this, according to the best of my recollection—that the defendants in the case had formerly resided in the city and bore an excellent character; or something of that nature. I think the Judge said to me, in that conversation, that if there was fraud in the case, when we came to the proof he would be able to detect it.

Q. Did he say any thing as to how strong a case the plaintiffs must make out?

A. No, sir; he said it was necessary to make out a strong case. I do not pretend to give his words.

Q. Did you state to him that there was any difference of opinion between the counsel for the plaintiffs in regard to the regularity or validity with which that suit was commenced? A. No, sir; nothing whatever.

Q. Nothing whatever, Mr. Sanderson?

A. No, sir; nothing. To answer your former question—in justice to myself I should say I knew there was a difference among the lawyers as to the proceedings. I did state to Judge Hubbell how the suit was commenced. I did it as well as I knew how—to get upon the scent as nearly as possible, as to whether it was commenced right or wrong. I merely stated the fact how the suit was commenced. I did not state the facts upon which the difference of opinion between the counsel was founded. I stated to Judge Hubbell that the suit was commenced by attachment, and that there was a summons issued against Mr. Simmonds and myself. Then the Judge gave me no definite opinion about it.

Q. Mr. Sanderson, will you recollect yourself and state whether Judge Hubbell did tell you whether that was right or wrong?

A. I think he gave no opinion as to the correctness of this procedure only in this general way that I now speak of.

Q. Had you advised with any one before coming to Madison, as to the propriety of seeing Judge Hubbell?

A. I won't be positive about that. I think I may have spoken to one of my counsel about it.

Q. Were you present in the Circuit Court in Milwaukee county, when a traverse was tried before Judge Hubbell?

A. I was, and heard a portion of his decision upon it.

Q. About what time intervened between the submission of the trial and the decision? A. Well, some little time.

Q. Between the time when that traverse was tried before Judge Hubbell and the time it was decided, did you pay Judge Hubbell any sum of money on any account?

A. Judge Hubbell solicited of me the loan of two hundred dollars for a short time, which I granted. That I should think was as much as two weeks, or perhaps a little more, after the submission of the question to him, and some little time before the decision. To give an explanation of that, so as not appear awkward myself, I would like to preface my statement of that with a remark. I had some business in Buffalo about some flour which I had shipped down, and wished to attend to. I went to New York and to Buffalo and returned, and the question had not yet been decided in court. Immediately after my return from New York—I think the next morning—I met Judge Hubbell coming out of the dining room at the "States"—I boarded there, my family being East that summer. When I met the Judge, I shook hands with him and asked him if he had made up his mind about that suit yet. He said he had; and if I would go up to court about such a day, I would hear him deliver his opinion. Well, I said, if you have made up your mind about it, have you any objection to let me know what it is. Well, he said, he did not know as he had any objection; and he then told me that he had made up his mind to sustain

the attachment; and that the cause was of such a nature that he so decided. Upon which I said I was very grateful, under the circumstances of the case in which I was placed—it got me out of a bad snap. Shortly after this conversation he said to me that he wished to borrow of me a couple of hundred dollars; that he had a son at the "States" who was some expense to him, and he also had to pay his schooling; and if I could lend him that sum for a short time, it would suit him very much. I said I could do so just as well as not, and handed him the money.

Q. How long after the dining-room conversation was it that you loaned him the money?

A. I do not exactly recollect. It might have been two mornings after this conversation.

Q. What is your recollection about its being the same day?

A. Well, it might have been the same day; I think, perhaps, it was the same day?

Q. About how many hours after, on the same day?

A. It was about that time.

Q. Was it in the same interview?

A. It might have been connected with the conversation at the time.

Q. Is it not within your recollection as to being positively at the same interview? A. It was soon after, at least.

Q. Well, what is your recollection as to its being in the *same* interview?

A. Well, it was either then, or soon afterwards.

Q. You have not given me any answer as to whether it was at the same interview? A. If I should say it was, I might be mistaken.

Q. Mr. Sanderson, will you answer me whether you have any recollection, and if any, what it is, as to its being at the same interview?

A. I would not now wish to state about it without some farther reflection upon the matter. Perhaps in a few moments I might be able to state exactly what I remember about it.

Q. When you were at New York at that time you speak of, did you see Mr. Perry? A. I did.

Q. Did you communicate to Mr. Perry what the result of the attachment suit would be, and the decision of the traverse?

A. No, sir, I did not communicate what the result would be. I told him what I thought it would be. I gave him my opinion about it.

Q. When you gave the money to Judge Hubbell, did you give it when you were asked for it, or did you procure it? A. I procured it soon after.

Q. Did he say anything about repaying it?

A. He said he would pay it in a short time. There was no specific time fixed.—There was no voucher given and none required. I don't know but the Judge offered to give me something for it; but I know I took none.

Q. In what account did you charge that money?

A. I did not charge it then. I merely kept a memorandum of it. After a while I credited it to cash and charged it to Theodore Perry & Co., the plaintiffs in the suit.

Q. Did you communicate to Theodore Perry the fact of having charged that two hundred dollars to him?

A. I think I did after I charged it. It was some two or three weeks be-

fore I charged it. I went to New York again, and whether it was after I returned the second time that I charged it, I do not now remember; but I think it was before I went the second time. That second time was before September of that year. I saw Theodore Perry that time. I returned to Milwaukee about the latter part of August, or the middle of August, or last of July. I declare I can't exactly remember; perhaps it was the middle of August. It was with in forty days of that time.

Q. Did you then meet Judge Hubbell.

A. No, sir, he had not yet returned from the East. I met him soon after his return, at the "States," and he said to me that he was in funds and was prepared to return me that money. At that time I had charged the money over to Mr. Perry. I said to him then that there was no matter about it, and said something from which he might infer that I intended to give it to him; which, indeed, I had made up my mind to do. He said that if I wished to make him a present of it, he should not accept it as such. I said that then I would consider it a loan, and when I wanted it I would call for it. The money was not then paid.

Q. How long after that was it that you had another interview on the subject of that money? A. I do not remember.

Q. Well, about how long? A. I cannot say exactly.

Q. How did the interview come about when you did meet him again?

A. I found a note in the post office from Judge Hubbell to me, about the money. I called on him at his room. The same day that I received the note, I was riding down street, Judge Hubbell called me into his room. I think that was previous to my receiving the note. He said he wished to pay me back that money.

Q. Had you at that time any conversation with Judge Hubbell in relation to charges about being preferred in the legislature against him? A. I think not.

Q. Do you mean to say, that in that interview, in relation to the payment of the money, that there was no coversation about charges being preferred in the legislature against Judge Hubbell? A. I do not remember!

Q. Well, Mr. Sanderson, I wish you would remember.

A. I think I had heard of some charges against him.

Q. Well, sir, was there no conversation between you and Judge Hubbell at that interview, in relation to the probability of charges being made against him?

A. Well, I would wish to state just as I think about it, but I do not now remember that any thing was said about charges.

Q. Did you state at that time, that any charge had been made against you about that two hundred dollars? A. I did not.

Q. What took place at that interview?

A. I think the judge asked me if I had received his note. I told him I had not. He said he had sent me one to the post office, because he wished to see me, and pay back that two hundred dollars. I think I said then, no matter about it at all. He said, very well—he wished to pay it; and I think he did go out of the room, and soon returned, saying that the person was out whom he expected to see, or something of that kind. I know that I told him that when I wanted the money I would call on him—and said, that whenever I should get into a tight place, I should know that I had a place where I could come and get two hundred dollars. He gave me a note for it, payable on

demand. That was after the conversation I had with him in the "States." It was after his holding court in Waukesha county. It was after I had heard there was a talk about charges being preferred against him.

Q. Do you mean to state, upon your oath, that prior to that conversation, and his giving you a note, no mention had been made between you that charges had been, or were about to be preferred against him?

A. No, sir, I do not mean to state any such thing. I mean to state that I have no recollection of any thing being stated.

Q. Prior to that, had you heard that transaction of two hundred dollars charged as a transaction of bribery?

A. Now I remember; I think I did hear it charged while the suit was in progress, that I had corrupted Judge Hubbell; I did not hear that charge as bribery.

Q. Well, now, since your memory is refreshed, prior to that interview, had you not an interview with Judge Hubbell in regard to charges being preferred against him?

A. I do not now remember of having an interview with Judge Hubbell after the conversation I had with him in September, and the one I had with him at the time I received the note.

Q. Do you not remember, Mr. Sanderson, in the very conversation when you received the note, that there was something said about a prospect of charges being preferred against him? A. I do not remember.

Q. Have you never stated it so, Mr. Sanderson?

A. It is possible that I have; but, I declare, I do not now remember.

Q. How long did that note remain in your possession?

A. Well, on my examination before the Committee, I was of the opinion that the second interview I had with the Judge—that is, the one immediately after he gave me his note, was after the Court convened. Circumstances have transpired since, which make me wish to date that interview back. I wish to correct my testimony as to time. He sent for me again, and wished to see me in his room. I could not state whether charges had been preferred in the Legislature at that time.

Q. Do you recollect saying when you were examined before the Committee, that at that time Mr. Wilson had come out to make charges?

A. I do not remember. I had heard for some time that the subject matter, or something connected with this suit, or some suit in which I was interested, was to be one subject of the charges. That interview took place after the first of October. I do not know whether it was after November. I was examined before the Committee of the House last winter; that was soon after the transaction.

Q. Was not your memory fresher as to dates then than now?

A. If the thing was in my mind, I could remember it then or now. I would only state this, that it was before the meeting of the Legislature a short time. I remember that a gentleman on one Sunday evening, advised me that there were charges to be preferred against Judge Hubbell; that Mr. Wilson and others had gone on to Madison to prefer charges; and said that this suit or something in connection with it was a thing on which they were making a great deal of noise, and he wanted to know what there was about it. That gentleman told me, that Sunday evening, that Wilson was about to prefer charges; the Legis-

lature convened the Wednesday following, and before that conversation with this gentleman, I had the conversation with Judge Hubbell. It might have been a week before that; that makes the interview some ten days before the meeting of the Legislature.

Q. How did that interview come about, who sought it?

A. Judge Hubbell. It took place in his room in the United States Hotel in Milwaukee. No one was present but myself and the Judge. He stated that he was in funds and wished to take up that little note.

Q. Was there any conversation at that interview, as to charges preferred or about to be preferred against the Judge? A. I do not now remember.

Q. Well, now Mr. Sanderson, I wish you would remember; and by way of refreshing your recollection, I will ask you whether you asked Judge Hubbell to think over your conversations and refresh your memory? Do you recollect that you told him that you had been accused of bribing him?

A. I do not remember of saying any such thing.

Q. Are you able to say that you never said such thing?

A. I am able to say that I don't remember making any such remark at that time.

Q. Will you state that no conversation about charges occurred at that interview? A. I do not remember, I was there but a short time.

Q. Mr. Sanderson, what did take place between you?

A. I think the Judge said something like this—he wished to take up that note and pay back that money. I know I said nothing in relation to the money at all. I received the money from him and said nothing about it. I gave him up the note, and, in going out of the room, I left the money on the chair I sat in, in Judge Hubbell's room. At the time I was examined before the committee that transaction remained in the same state. I believe, if I remember rightly, that I stated before the committee, that I had not seen Judge Hubbell since I left the money. On reflection, and thinking of it afterwards, I remembered, and will now state, that I saw Judge Hubbell in Mr. Arnold's office afterwards, on a Sunday afternoon. The Judge came in and I went immediately out. I think Mr. Arnold told me that the Judge had wished to see me.

Q. Had you had, prior to the examination before the committee, any farther conversation with the Judge in regard to that money?

A. On receiving the information from this gentleman from the country, I went up to see Judge Hubbell. I believe that there was some company in the Judge's room at the time. I think I did not go into the room. The Judge cam out into the hall. There was something said about the money.

Q. Have you conversed with Judge Hubbell upon the transaction since the examination before the committee? A. I think I have.

Q. Did you not have a conversation with him very soon after you returned to Milwaukee from being examined?

A. I think when I returned the Judge was in the cars and came and sat down by me. I have conversed with him frequently since, but not in relation to this matter. It so happened that when I came here at this time the American House was full, and Mr. Sadd went out with me to hunt up board, and I found board where the Judge stops. Since I have been there we have had conversation in relation to this suit among other things.

Q. Did you go home to Milwaukee about Saturday last? A. I did.

Q. Will you tell me whether your business in Milwaukee had any reference to this trial? A. Not the most distant.

Q. You have now had time to reflect whether the borrowing the money was in the same interview in which the decision in your suit was announced to you?

A. I wish to state it distinctly and plainly, I think it was at that conversation, or during that interview, but I won't be positive about it.

Q. When you were examined before the committee was your memory fresher than now?

A. I think things would be fresher upon my mind. I know this thing, that at the time of my examination before the committee, after my testimony was taken down and read over to me, I thought it was a hard kind of a yarn growing out of the facts. I thought that the thing was so construed and prevaricated that I thought it was not correct. I signed it for the single reason that I had stated it; and yet the thing read different from what my own testimony seemed to be, and not as I stated it.

Q. What amount was involved in that suit?

A. Over twenty-one thousand dollars.

Q. When you let Judge Hubbell have the money, did you intend it as a loan or a gift?

A. At that time I don't know what my thoughts were about it. I concluded afterwards, however, to make a gift of it to him. I know I had thought, that since the judge had sustained the attachment I would give it to him.

Q. When you saw Theodore Perry in New York, did you propose to him to make any present to Judge Hubbell?

A. I think I had already made the present; however, I don't know that a word passed between us about making him a present. I think this matter, that when I was in New York the first time, I did intimate to Mr. Perry the propriety of making the Judge, or his wife who was to be, a present.

Cross-Examination.—Mr. ARNOLD. I propose to put a few questions to the witness. I can hardly call it a cross-examination, because he has already been cross-examined, which is a very unusual course.

Q. When you met Judge Hubbell here in Madison last winter, did you meet him at a barber-shop or coming out of a barber-shop?

A. I met him in company with some gentlemen; I think it was in the park. At that time I sought the interview with him. In that conversation I think I asked him at what time my suit would come on, and whether he would try it in the fore part or latter part of the term.

Q. Was that the commencement of your conversation?

A. I declare, my memory about those little matters is very faint. There was some little conversation between us. The Court was in session and I wished to have the suit tried, so as to pay attention to a large quantity of flour that I wanted to ship. I do not know that Judge Hubbell knew any thing about my suit. He asked me what the suit was about, and said that he had seen such a suit on the docket. I went on and stated that the suit was commenced by an affidavit and those papers that were issued. The summons was in the writ itself. Judge Hubbell replied that it was an attachment suit. I told him that that suit would have to be tried before him, and that he would have to

pass on the evidence, whether an attachment would be sustained or not, and that the traverse of the affidavit would have to be tried by or before him. He said that since the law had been changed there had not been any trial on that point. There was a remark made to the effect that he would try it and decide it according to the evidence. The meaning was this, that he would do justice between the parties, and that he would find judgment for whichever party was right.

Q. In that conversation did he promise you or give you to understand that he would decide either that that suit was rightly brought, or that he would decide it according to its merits in your favor?

A. No, sir, he gave me no intimation from which I could draw such a conclusion. I did not enter into the merits of the case to him. I thought of course it would be an improper thing. I did not talk in relation to the particulars of the case. From that time till the hearing of the traverse, I do not think I had any conversation with him about the merits of the case. Indeed, no conversation with him at all in relation to it.

Q. At the trial of the suit, and on the occasion of your interview with him, which you mentioned, and up to the time the money was loaned, did you have any conversation with him, in which he made any assurances to you of how he should decide that suit?

A. I think that on the evening after this suit was argued, I took tea at the "States." The Judge and others were at the table. There was some general conversation then in relation to the suit. I think the Judge made some remarks about it, but in what words I do not remember. There was a remark dropped, however, from which I inferred a favorable view to the suit; but there was no assurance whatever. Whatever was stated was stated in the presence of all present; it was at a public table in a public hotel. I do not recollect the day of the month when the decision was made in open court. It was the day before you (Mr. Arnold) went to Baltimore. I was in court and heard part of the decision. In my conversation with him when he stated that he had decided to sustain the attachment he said that the proofs in the case were stronger than he had thought on examination. I know that I expressed myself under feelings of friendship and esteem for him very strongly, situated as I was in the matter. And he replied that I had nothing to thank him for, he had done his duty, and was sorry such things should take place in any city, referring to transactions that had been disclosed on the trial. It was then, at the end of that interview, that he solicited the loan of that money. I think I did not give him the money at that time but afterwards, indeed whether I handed him the money, or not, I don't remember.

Q. From any thing that passed between you at that conversation, had Judge Hubbell any reason to regard that otherwise than a loan?

Mr. RYAN. I think, Mr. President, the Court is a better judge of that than the witness.

Mr. ARNOLD. I can put the question in a better form. At the time you gave the money to the Judge, did he receive it as a bribe, as a gift, or as a loan?

Mr. RYAN. I object to that form of the question; also, of all that took place at that interview—the Court will be a better judge than the witness.

Senator DUNN introduced four questions in writing:

1st. Did Judge Hubbell ask you for the money as a loan or as a gift?

A. I would like to state the fact as it is, for the benefit of all concerned. I had paid counsel 1,200 dollars, and if I could have thought any such result could have been obtained, I should not have paid so much to counsel. Judge Hubbell borrowed the sum of me as a loan, and expecting it to be paid.

2nd. Did he ever propose to you that you should give him $200?

A. He never proposed to me any thing of the kind.

3d. Was the loan made before or after the decision of the cause, referred to him was announced as you have testified?

A. It was after the Judge had told me what his decision was in the case, but before the announcement was made in the court, and after this particular conversation.

4th. Did you leave the money in the chair, as testified by you, by any connivance or consent of Judge Hubbell.

A. I left it there out of my own wish and will.

Mr. Arnold. I am obliged to the honorable member of the Court, he has saved me several questions. Had you expressed in the progress of that suit, that in case he decided it in your favor, you would make him or his wife a present?

A. I did state, I think to you, that I was intending to do so. I stated that I was about to give the lady he was going to marry a gold watch. Mr. Arnold said to me ——

Mr. Ryan. I object to what Mr. Arnold said. Though I presume he said all that was right and proper upon the subject, I object to testimony upon it here.

Q. Did you ever communicate that design to the Judge before the decision of the case? A. Not at all.

Q. Did you, in fact, intend at the time you loaned him the money, to convert it yourself into a gift?

A. I won't say now just what I did think about it. I know after a while I did intend to let it remain as it was, and never ask him for the money. I knew that the Judge was about to be married. His salary was small. The sum involved in my affair was large. I got out of a tight place, and was very willing to pay something for it.

Q. You stated, in answer to Mr. Ryan, that you had some fault to find with the manner in which your testimony was taken down by the committee. Did you mean to say any thing more than this, that it was taken down without giving you an opportunity to explain?

A. There were no explanations taken down. The questions were not put down with the answers, and I declare in looking at the thing after it was stated, it seemed to me that it was untrue. Seeing that it was taken down and written as it was, I thought it was an unfair account of the transaction. That is the way I looked at it, and I believe I so stated to one of the committee. I think I said it made a hard story out of nothing at all.

Q. Do you recollect of any occasion in which you had conversation with Judge Hubbell about charges being preferred against him except in the presence of the gentlemen to whom you have alluded?

A. Yes, the conversation was more particularly between those other men than between the Judge and myself. I think this other gentleman came out to Madison, with the intention of attending the Legislature. I do not remember previous to that conversation any conversation about charges being preferred.

Senator STEWART, submitted the following questions: first, Where was the Judge at the time you left the money in the chair?

A. Well, I could show the Court the position the Judge occupied, and that I occupied, very nearly. With this gentleman (Mr. Knowlton) sitting as he does before me, the Judge was writing when I went into his back room; he occupied nearly the position to me that this genteman does. He turned round from his desk, shook hands with me, said excuse me from rising, or something of that kind and then said that he wished to pay me the money. I laid my hat down on the sofa or lounge and sat down in a chair, nearly back of him. After he paid me the money, when I went out, I picked up my hat, passed the chair I had been sitting in and laid the money down in it as I passed.

Mr. STEWART now withdrew his second question.

Senator LEWIS submitted the following question:

Was the money left with his knowledge or consent?

A. It was not with his consent. Whether it was with his knowledge, whether he saw me or not, I do not certainly know, but from the position he occupied, I do not think he could have seen me leave it?

A SENATOR. The witness says the Judge did not see him leave the money, that is not answering whether it was with the Judge's knowledge.

WITNESS. I think he had no means of knowing, and I think he did not know that I left it.

Direct Examination resumed.—Q. Was your testimony before the committee taken by one member of it? A. I do not recollect.

Q. Was the testimony read over to you?

A. Yes, sir, and it was corrected in one particular point.

Q. Was it not corrected in all points in which you asked to have it corrected.

A. No, sir, or, at least, I do not know that I asked any more than this particular correction.

Q. At the time you signed your testimony, or before you signed, did you make any objection to it that you had not obviated by correction?

A. I had stated, and it was in my own mind immediately afterwards, and always was, that the way and manner in which the testimony was taken and put down, was not exactly fair.

Q. Now, had you made to the committee any objection which was not obviated by correction made at your own request before you signed the testimony?

A. I do not know that I made any particular objection.

Q. Did you make in the committee room any objection?

A. I made the objection that it was a queer way, the way in which the witness was examined. I think I stated that to one of the committee, in the committee room, or something of that nature. They were dealing with a gentleman's character; I said a man should be cautious how he proceeded.

Q. Was it not this—that all men were liable to err, and you wanted that committee not to be hard with Judge Hubbell?

A. I think I stated something like that, or that a man might be imprudent. I said that in general terms, and feeling so I objected to the way and manner in which it was done. As to the writing you took down, it was taken down perhaps as I stated it, but the manner in connection with it was not stated. The answers were only a portion of what I said without any question to them. As for instance, I remember one thing particularly. The question was asked

if I went to New York, and if I saw Mr. Perry there; it was put down that I went to New York and saw Mr. Perry. Well, now I did not go to New York to see Mr. Perry.

Q. After you returned to Milwaukee from Madison, you say that Judge Hubbell gave you no understanding as to the result of that case. Did you not express yourself with greater confidence as to the result of that suit after that than before? A. I do not remember that I did; perhaps I did.

Q. Mr. Sanderson, will you tell me, if you please, whether you did not express yourself as to the result of that suit with greater confidence after that?

A. Well, perhaps I did have greater confidence and so express myself, but not altogether because of my interview with Judge Hubbell. When I returned I found addressed to me two or three letters, one from Washington county, and from here at Madison, and they gave me greater confidence; they related to some lands that Mr. Comstock had transferred, and that and my interview with Judge Hubbell, altogether, gave me greater confidence as to the result.

Q. Did you not state that a great part of your greater confidence was because of your interview with Judge Hubbell?

A. I stated that Judge Hubbell would decide the case as it should be decided, and that I was not afraid to leave it in his hands.

Q. At the interview between you and Judge Hubbell, when he repaid you the money, have you testified that you and he had conversation together touching that transaction?

A. I think we had conversations after that transaction. We had conversation at different times about it, and about notices in the papers concerning it; and he asked me at one conversation, if you (I) had been subpœnaed out before that fishing committee. I think we had no conversation at that time about my having been accused of bribery. The chair in which I laid the money was four or six feet from the Judge; he was in the larger of his rooms at his desk, and not in the outer narrow room. The desk stood against the south wall, and the door by which I entered the room was behind him. It was in the United States Hotel—as I understand it, it was where Judge Hubbell inhabited at that time—room letter H, I think. We were still conversing as I left the room; I bid him good day. I was standing up, and shook hands with him; I had the money in my left hand, and as I went out, I left it in the chair; I did not observe which way the Judge was looking when I left it; I was with him not to exceed five or ten minutes; I did not count that money when I got nor when I left it. It was in bank bills. I had some time before heard of charges being preferred against Judge Hubbell. I had not heard the Judge converse about the prospect of charges being preferred against him before that time. I cannot state any thing about the banks from which the bills were issued, or whether the money was current or uncurrent. I made no examination of the money whatever, only to receive it.

Senator ALLEN asked the following questions: 1st. Had he any knowledge of your intention to make him or his lady a present?

A. So far as my knowledge extends I know that he did not have any such knowledge.

Q. 2nd. Did you call upon Judge Hubbell here in Madison, for the express purpose, and for none other, than talking with him about your suit?

A. The leading desire was to talk with him expressly as to that suit; that was the reason I desired this interview.

Q. 3d. Did you, at any time before he took up the note, say to him, that you intended he should keep the money as a gift?

A. I, at no time, said to Judge Hubbell, in so many words, that I intended to give him the money. I did state, as I have already stated, that at the first conversation I had with him, immediately after his return from the east, I did say and convey something from which he inferred that I intended to give him the money, and on which he said he could not receive it as a gift, and that as he had borrowed it he must pay it. I said to him, I did not want it then, and that as he had been to some little expense in getting married, he might keep it, and when I wanted the money I would call on him for it, and then I left the house immediately.

Cross Examination resumed.—Q. When you received the bills, were they labelled as bank bills usually are?

A. They looked like bank bills just come from the bank, measuring about that amount of money—$200. I did not count them, there might have been more; but I should think as there was two hundred dollars marked on the label, that there was $200.

Mr. KNOWLTON. I wish you to state distinctly, whether, according to the best of your recollection, you ever had any conversation with Judge Hubbell in relation to the preferring of charges against him until the time you mention, when the gentleman informed you of them on the Sunday before the convening of the Legislature.

A. Well, I do not know. The thing started about that time considerably.

Mr. KNOWLTON. Yes, but previous to that conversation, how was it?

A. I do not remember having any conversation previous to that, and that was after I left the money in the chair; I am really sorry I did not take the money away. I now feel that I have done the Judge injustice.

The Court here adjourned till the next morning (Wednesday.)

EIGHTH DAY.

WEDNESDAY, June 15.

MORNING SESSION.

JONATHAN TAYLOR was called to testify on the first specification of the second article.

I reside in Milwaukee, and have resided there since 1842. I have been acquainted with Judge Hubbell some six or eight years. Before the organization of the State Government, I had a claim or suit against the city of Milwaukee. My attorneys in prosecuting that claim or suit, were Judge Hubbell and Mr. Holliday. That suit was before Judge Whiton, in the Racine County District Court. The suit was brought by Judge Hubbell and was decided in Milwaukee County by Judge Whiton. There was an application for a mandamus, which was refused, and after the refusal it was brought into Milwaukee County and decided. That second suit was commenced in Milwaukee County, and removed to Racine County; that suit went into judgment about the latter part of December, or the fore part of January, 1851-2. I first heard from Judge Hubbell that that suit had gone into judgment; I heard by letter (the witness

produced the letter.) This is not the first letter I received on the subject. There is one dated December 25, this is prior to that. I received them through the Post Office. I received that first letter in 1852.

Mr. RYAN. I asked the question because it is dated inside Jan. 3d, 1851.

Witness. I know the Judge's hand writing; these letters are in his hand writing.

Mr. ARNOLD. For what purpose do you offer these letters?

Mr. RYAN. Well, as a part of the history of these specifications.

Mr. ARNOLD. I am unable to perceive any bearing that they can possibly have upon the first specification. At all events we object to the letters being received as testimony.

Mr. RYAN. The first specification charges that—(Mr. R. read the 1st specification of article 2d.) That is the specification. We prove by the witness, Jonathan Taylor, that prior to the organization of the State Government, and prior to the time that Judge Hubbell was upon the bench, that a suit was commenced in the city of Milwaukee and removed to the County of Racine. We prove that the first knowledge of his decision in the case was communicated to him by Judge Hubbell. He says he received that knowledge by letter and produced the letters. I cannot very well explain these letters, but in the first place we offer them as a part of the history of this case, and of the assignment; and secondly, because these letters go strongly to confirm the whole idea in this specification, that when Judge Hubbell sat upon this creditor's bill in Milwaukee County, he was the owner of it.

Mr. ARNOLD. We didn't object to the introduction of these letters, because the respondent is afraid of their exhibition, but simply on the ground of immateriality. And besides, there must be some limit, as in all other judicial proceedings, fixed to the scope that either party can go in introducing evidence. This specification is based upon the assumption that a judgment has been obtained; and it has been already in proof that it was rendered and when. Now the whole proceeding is based upon ulterior proceedings upon that judgment, and that Judge Hubbell purchased it, and afterwards refused an order to dissolve an injunction. Now I ask what possible bearing can the letters, written by Judge Hubbell to the witness, have, to make out that specification. They have proved that the witness had knowledge of it, and desired that knowledge from the respondent. Now the duty of the witness is to go on and show that the respondent purchased that judgment. The real ground of objection is, however, immediately. A member of the Court called for the reading of the letters.

Mr. RYAN. The reason why I did not read the letters was out of delicacy to the Court, while the objection was pending against them. If there is no objection I will read them.

Mr. DUNN. I rise, not for debating, but for information. As I understand the rule, when a question arises before the Court, as to the ability or disability of evidence, that it be submitted to the Court. This is the very question which is submitted to the Court, and inasmuch as we know nothing of the contents of these letters it is impossible to decide. There must be some mode of conveying their contents to the minds of the Court. I suppose there is no danger in reading the letters.

Mr. ARNOLD. We appreciate very fully the remarks upon the questions raised by the Hon. Member. We felt the awkwardness of the position in that

respect in objecting to the letters. We will now permit them to be read to the Court—but not to be read as evidence—to save their being passed round from hand to hand.

Mr. RYAN read the letters, as follows:

(*Private.*)

MADISON, Jan. 3d, 1851.

My dear Sir,

I was mistaken in the form of the judgment which Judge Whiton was to pronounce, and his absence from Madison has prevented his deciding until yesterday.

Last evening he sent to Racine a *judgment* in your favor for about $1,060 against the city of Milwaukee. This is an ordinary judgment, collectable in money; and you are not bound to take *orders*—it includes the amount of orders not issued and *delivered* to you, wth interest from 1st January, 1847—according to the award.

I would *suggest* to you, that you should assign this judgment to Henry P. Hubbell, or William Cook, for purposes of safety to yourself. And I have written to the clerk of court at Racine, to send a transcript of the judgment to H. P. Hubbell, with whom you will find it, when it arrives. I hope, when this judgment is collected, you will bear in mind my old account for services, (as I don't doubt you will.) I have been of material service to you in making explanations to Judge Whiton at this place.

In haste,

Very truly yours,

L. HUBBELL.

Post marked MADISON.
Directed to Mr. JONATHAN TAYLOR,
Milwaukee.

MADISON, Dec. 25, 1851.

Dear Sir,

I have just seen Judge Whiton. He has decided your case, but has not transmitted the papers to Racine. He will do so, within a few days; and if at the end of 10 days—say by Christmas—you send to the clerk of the court of Racine county, he will send you an exemplified copy of the judgment, which you can serve on the common council—no, no—I am in error; the court directs a *writ of mandamus*, and the clerk will issueand send you the *writ*. Perhaps, however, the common council will issue the orders to you when they *know* what Judge Whiton's decision is, without waiting for the *writ*. I think they will.

I write in court, and in haste. There is a bal. of the ward orders due, which you were to have delivered to my nephew. I wish you would do it at *once*, agreeably to the order.

Yours truly,

LEVI HUBBELL.

Post marked MADISON, WIS.
16 Dec.
Directed Mr. JONATHAN TAYLOR,
Milwaukee,
Wisconsin.

The vote was then taken upon receiving them as evidence, and decided in the negative. Ayes, 10—Noes, 14.

Mr. RYAN proceeded with the examination.

Q. Mr. Taylor, did you execute any assignment of the judgement which had been so far recovered to any person before the return of Judge Hubbell from Madison?

A. Yes, sir, to Henry P. Hubbell, who is the same Henry P. Hubbell mentioned in the letter.

Q. By, or upon what consideration, did you execute that assignment to Henry P. Hubbell?

Mr. ARNOLD. For what purpose is the question asked?

Mr. RYAN. Well, as a part of the history of the whole proceeding, and as really essential to the proper understanding of it.

Mr. ARNOLD. Mr. President, we object to it, and I will state the objection in a single word—it is that it is immaterial. This specification alleges distinctly that the judgment was purchased by the respondent, and was assigned to Levi Blossom. They have already proven by the witness, that before Judge Hubbell returned to Milwaukee from this place, he had assigned the judgment to Henry P. Hubbell. Now I am at a loss to know how this question can be material after having shown that fact, and in consideration that it is stated here that the judgment was purchased by the respondent. Now what does this court wish to know about any assignment to Henry P. Hubbell, or any purchase of it by him? The allegation is that it was purchased and procured to be assigned to Levi Blossom; how can it be important then to show here that assignment to Henry P. Hubbell?

Mr. RYAN. Mr. President, we propose to show the ultimate assignment of this judgment, upon a purchase by the defendant, to Levi Blossom as his nominee and trustee; but I do not think we ought to be confined to the mere naked proof of that fact. I think we ought to be allowed to prove all the *res gesta* which surround and precede that assignment, and which tend to give it significance and to explain it. We propose to show that before the return of Judge Hubbell from Madison, and while he was still at Madison, he was aiming to procure an assignment of this judgement to his nominee, and that upon his return, he actually made a bargain for the purchase of the judgement, and did purchase it. But I humbly apprehend, Mr. President, that all the antecedents showing an anxiety on the part of the Judge to get the control of this judgment in his nominee, is pregnant evidence of the actual purchase of it; in other words, it is evidence all leading to the purchase of the judgment by himself. It is in that view that I offer it; and it is, in the judgment of these Managers, a pregnant part of the case—essential to its proper understanding, and giving color to the whole of it.

Mr. ARNOLD. In relation to the whole proceeding here pending, we insist, as the learned counsel said yesterday, that we are to be governed by rules of law. We must not make one accusation and prove another, even though that accusation may be one of guilt. There is nothing better understood, than that the common rules of law should be applied here. Now, if it is material to be alleged against the respondent, that there was any thing fraudulent or corrupt in his proving this judgment to be transferred to Henry P. Hubbell, they should have thus alleged; but they have not seen fit to do so. They have

alleged that the respondent purchased a judgment and procured its assignment to Levi Blossom. Now that is the point they should establish; instead of which, I might almost say, they have shown themselves out of Court by this attempt to show this assignment to Henry P. Hubbell. I hope to limit them to the purchase by the respondent, of the witness.

The vote was then taken upon receiving the question, and was decided in the affirmative. Ayes 19, noes 5.

Whereupon the witness answered—I assigned it to Henry P. Hubbell, upon the suggestion in Judge Hubbell's letter, and without any consideration. About a week after that, and some time between the tenth and twentieth of January, though it might have been later, Judge Hubbell returned from Madison. I was down to Milwaukee soon after his return, had an interview with him, and talked over the subject of the judgment.

Q. What connection of Judge Hubbell was Henry P. Hubbell?

A. I understand he was his nephew. I do not exactly know his business relation with him. I saw him in his office sometimes, and in other places. I was not there frequently. After the Judge and I talked over the matter awhile about the judgment, the amount of it, and so on, he proposed to buy the judgment of me, and did so. I do not think that there was any other person present at the interview. He offered me seven hundred dollars for the judgment. We finally agreed upon eight hundred. The judgment was for one thousand and sixty dollars. He thought I ought to pay him something more for services than I thought I ought to. We talked that over for awhile. I stated about how much I had paid him. He thought it not so much, but finally, we agreed about it. He thought I ought to allow him about a hundred dollars for services—that would make nine hundred dollars that he allowed me for the judgment.

Q. How was the odd hundred and sixty dollars, or so, accounted for?

A. Well, he thought it would be some time before he could get the money, and the use of money was worth something at that time. In other words, that was a discount on the judgment. He gave me a check on Alexander Mitchell for one hundred dollars, and his own note, payable to Robert Duff, or bearer, for seven hundred dollars. I think the check was drawn in the same way. Robert Duff was my brother-in-law. The note was made payable on the ninth of the next February. The Judge drew an assignment of the judgment to Levi Blossom, which I executed. It was drawn and executed at the same interview in which the purchase was made. Mr. Blossom was not present. I had never, at that time, any negotiation or conversation with Mr. Blossom with regard to that judgment; and I have no means of knowing that, at that time, Mr. Blossom knew any thing of it, or even that there was such a judgment. I do not know what became of the assignment to Henry P. Hubbell. It was never acted on to my knowledge. I have never seen or heard of it since.

Q. In the negotiation and conversation between you and Judge Hubbell for the purchase of that judgment, was that assignment of Henry P. Hubbell spoken of?

A. I think I mentioned it, and he said he would hand it to me; Henry P. was not about there. I never thought of it since, and never got it.

Mr. Ryan. Mr. President, I am instructed by the Managers to say, at this stage of the case, that having explained so much of the assignment, and for the purpose of doing away with all difficulty in regard to the previous assignment,

we propose to offer over again the letters which were rejected by the Court at a former stage of the proceedings.

Mr. Arnold. For what purpose?

Mr. Ryan. I just stated the purpose at the time they were offered. They might have been prematurely offered. Indeed, I am inclined to think it was premature. The court could not see the relativeness of them at that time, as I thought I could, and as I think they now do. We had shown ourselves out of court, because we had shown the assignment to Henry P. Hubbell. For the purpose now of avoiding all difficulty growing out of the previous assignment, we propose to offer these letters. The witness has stated that it was executed to Henry P. Hubbell, and was executed upon the suggestion contained in the judge's letter. That letter is not before the court as evidence.—In order to apply and comprehend the testimony of the witness the letter must be before the court. It is significant also, beyond that to the offering of a mere formal matter growing out of the negotiation—treating that assignment as a nullity and promising to surrender it. Now that matter cannot be fairly of comment hereafter unless the letter containing that suggestion is before the court.

Mr. Arnold. The objections to the letter are withdrawn.

Mr. Ryan. I suppose, then, as they have been already read, they may be considered as evidence in court, without a second reading. It is useless to consume time for that.

Q. Mr. Taylor, where did you next see Judge Hubbell upon the subject of that judgment?

A. It was some few days after, in his room at the "States." Levi Blossom was present

Q. Will you state to the court as nearly as you can recollect, what took place at that interview, and in the order in which it took place?

Mr. Arnold. You limit your question to the matter of this judgment, do you not?

Mr. Ryan. Oh, certainly, I wish nothing else.

A. Mr. Blossom and Judge Hubbell were together when I came there.

Q. How did you come to meet them there?

A. I do not recollect at this time. Mr. Blossom stated that he had referred the judgment to the common council for settlement, and the common council had referred it to the finance committee, of which Mr. Daggett was chairman. He had reported adversely to paying the judgment, but had reported that if Mr. Blossom would come and settle up, if any thing was due him they would pay him. They had seven hundred dollars of taxes against him which he had refused to pay. They wanted him to make an off-set. Mr. Blossom then made a suggestion. He spoke in this way—"Probably you had better assign it to some person else." I replied I had no interest in it—I did not care what became of it. The Judge however said, "let it remain as it is." Something was said, I do not recollect very distinctly. I think, however, the Judge told Mr. Blossom to send to Racine that afternoon for an execution, and he would make it returnable on Monday so as to get the money of the treasurer of the city before the funds were all paid out.

Q. Has the seven hundred note been paid?

A. Yes, Judge Hubbell paid it to me. He paid it all at one time, about the 20th of May, 1852. There was three hundred and odd dollars—a little over or

a little less—in money, and four hundred—a little over or a little less—in a draft or check on Alexander Mitchell.

Q. Had you before that time called upon Judge Hubbell for the payment of the note?

A. I had an interview with him about it. He said it was a hard time to raise money, and he could not let me have it then. I never applied to him for the money except that time. I afterwards wrote to the judge in reference to some orders. I received a reply concerning the orders and also in relation to the payment of the money.

Q. Was this note in Judge Hubbell's hand-writing? A. Yes, sir.

Q. I see it is not post marked. How did you receive it?

A. Well, I do not recollect whether Mr. Whitehead handed it to me, or whether I got it out of the post office.

Mr. RYAN read the letter, as follows:

MILWAUKEE, April 4, 1852.

My dear Sir,

I am exceedingly sorry I cannot comply with your urgent request. As soon as the city bond is *sold*—(and I hope it will be within 10 days to 2 weeks)—I will pay up the note. I have no city orders within my control, but will try and get some—tho' it is doubtful, those I bought of Orton being all hypothecated.

Truly yours,

LEVI HUBBELL.

Mr. JONATHAN TAYLOR.

Addressed Mr. JONATHAN TAYLOR,
Milwaukee.

Q. Had you any conversation with Judge Hubbell in relation to the bond which has been mentioned?

A. Yes, I had two or three conversations in reference to it. He told me at one time, he wanted me take a $500 bond in part payment of the note. That, however, was before the note became due, or about that time. That interview was at his office. He told me at another time, at Gardiner's Hall, that James H. Rogers had offered him a thousand dollars for the bond, but that it was less than it was worth, and he would not sell it. He told me it was twelve hundred dollars. He afterwards told me he had sent the bond East, by Mr. Alexander Mitchell, to be negotiated. He said if it had been in five hundred dollars bonds, or smaller amounts, it would have sold more readily; but being twelve hundred dollars, it was more difficult to dispose of. He told me he received the bond on account of that judgment.

Cross Examination.—Q. Mr. Taylor, how long have you been acquainted with Judge Hubbell?

A. About eight or nine years—since 1844 or 1845. I knew him in Milwaukee, where we both resided. He was engaged in the practice of the law. I became quite well acquainted with him.

Q. Were you on friendly terms with him? A. Yes, sir.

Q. Very friendly terms? A. Yes, sir.

Q. Was he your attorney and confidential adviser?

A. He was. When I first became acquainted with him, Hubbell, Finch &

Lynde were my attorneys. After he separated from Finch and Lynde, he continued to be my attorney up to the time that he was elected Judge.

Q. Until what period did you continue on friendly terms?

A. 'Till about the 20th of May last. Indeed, I have been since, 'till about the 1st of July.

Q. Have you since that time been on unfriendly terms, or an enemy to him?

A. Well, I don't know as I was on unfriendly terms, or an enemy; he did not treat me right, and I felt indignant at it.

Q. Have you spoken freely and frequently against him since that time?

A. I have spoken, now and then, about the transaction which took place between him and and me.

Q. Have you spoken against him since the measures were taken to impeach him, in connection with those measures?

A. Only in reference to that transaction which offended me.

Q. Have you not in public places, and in the presence of divers persons, not only spoken against him, but make divers threats against him?

A. I am pretty positive I never did.

Q. Did you not, in Belden's saloon, in the presence of William Sanderson, make threats against him?

A. I do not know what kind of threats you allude to; but I never made any threats against him with regard to the impeachment?

Q. You are positive?

A. I am positive of that. I have made threats that I would sue him.

Q. Have you ever made statements as to what your evidence would be on his trial, in the presence of Levi Blossom?

A. I never made any statement of what my evidence would be in the presence of Levi Blossom or any one else. I told Levi Blossom the facts that existed, but made no threats.

Q. Were you a witness before the committee of the Assembly? A. I was

Q. How did it happen that those letters came out, that have been exhibited here?

A. Well, sir, I went to James S. Brown to seek advice about recovering six hundred dollars in an order transaction with Judge Hubbell. I showed the letters to him.—He said he did not think I could recover the amount in a suit at law. He advised me, I think, to go to Mr. Finch, and said that if such were the facts—and those letters proved it to be so—Judge Hubbell would settle it rather than have any trouble about it. I did not go to Mr. Finch, because he was an enemy to the Judge; but went to Mr. Emmons.

Q. How did it happen that you came before the committee and disclosed the letters—at whose instance?

A. I do not recollect that I came at any person's instance. I gave Mr. Emmons the letters. He wanted to keep them. I did not want him to at first. He said he would take them, put them in a envelope and keep them in a safe.

Q. Who produced them before the committee?

A. I did, I believe—I think I did. I got them from Mr. Emmons.

Q. Had Judge Hubbell, while he was at the bar, done a considerable business for you, of various kinds, in the way of professional or monetary transactions, or otherwise?

A. He had loaned me money sometimes in small amounts. He had tried

several suits for me, that is, Hubbell, Finch & Lynde, tried some suits, and I think he tried one or two after he separated from them.

Q. Was there quite a suit growing out of a city stock contract, which he attended to? A. Yes, sir.

Q. Had he quite a bill against you for professional services?

A. He never exhibited a bill to me.

Q. You say that at the time of the assignment of the judgment, he claimed a hundred dollars for services; how did he state that claim?

A. He spoke in this way—he said he had been of vital service to me with Judge Whiton, and I ought to allow him a hundred dollars.

Q. Are you not mistaken? Did you not in fact claim that you ought not to pay him over four hundred dollars; or was not his four hundred dollars or over, against you?

A. No, sir. On three or four occasions before, I had paid him about two hundred and sixty dollars. The judge thought I ought to pay him about a hundred more to make us square.

Q. Was not that sum of a hundred dollars claimed for a particular service; and had not he a bill otherwise against you?

A. No, sir. He had a note against me at the time, given, I think for two hundred dollars, payable in fourth ward orders. I gave Henry P. Hubbell an order on Comstock some time in the fore part of March. After the assignment of the judgment, I went down and paid him the balance of the orders and took up the note.

Q. Had not that reference alone to orders which he had loaned to you in 1846?

A. Judge Hubbell bought of me one hundred and eighty five dollars worth of fourth ward orders. He gave them to me to refer to the common council to give a bond for them. I handed the orders to Mr. Downer; he referred them to the common council, who refused to give a bond for them. Mr. Downer handed me back the orders, and I had them in my hands a year or two. Well, I was talking with the Judge one day in reference to the matter, and he took my note for the orders. He figured up the interest at seven per cent. for one hundred and forty five dollars. Subsequently I used the orders. That was the same note for which I gave my order on Comstock.

Q. Now, at the time of the assignment of this judgment, did you owe Judge Hubbell otherwise? A. I did not.

Q. Had he any note secured by mortgage against you?

A. I do not think he had any note. If he had, it was given for nothing; besides, he did not claim any thing but the hundred dollars.

Q. Do you say that the only reason that induced you to sell the judgment for eight hundred dollars, was the depreciation of the city credit?

A. No, I had made up my mind to go to California, and I wanted the money for the judgment. I had sold my teams and waggons, and was all ready to go.

Q. Why, then, did you sell for so small an amount in money?

A. The bargain was for cash. After he drew the bond, and I had signed it, he asked me if it would make any particular difference if I did not have all of the money to-day. I said it would not, if I could have the money by the ninth of February it would do just as well; and he gave me the note for seven hundred dollars payable on that day.

Q. Why did you take that note payable to Robert Duff?

A. Because there were some old debts and judgments hanging over me against Taylor and Locke.

Q. Why did you make that assignment to Henry P. Hubbell?

A. Because Judge Hubbell advised me to.

Q. Was that the real and only reason?

A. I did it also to keep it out of the hands of my creditors. Judge Hubbell mentioned either Henry P. Hubbell or William Cook; I preferred Hubbell.

Q. You say the Judge drafted the assignment to Levi Blossom, then and there executed—do you swear to that now? A. I swear the same, decidedly.

Q. Did Henry P. Hubbell come to you with an assignment, which you executed? A. He never did.

Q. Did you ever execute more than one assignment of this judgment to Mr. Blossom? A. No, sir.

Direct Examination resumed.—Q. You have answered to Mr. Arnold that you had taken advice about instituting legal proceedings against Judge Hubbell; was that at all in regard to the judgment you assigned to him?

A. No, sir; it was in reference to another transaction.

Q. Is that the business difficulty that came up between you?

A. Yes, sir; that created the hard feeling.

Q. Will you state what that business was, out of which that controversy grew?

M. ARNOLD. I object to that question.

Mr. RYAN. I ask it because the counsel on the cross-examination enquired whether there was not a difficulty between the defenant and the witness, and whether he had not taken advice towards proceedings.

Mr. ARNOLD. No, sir.

Mr. RYAN. At all events, the difficulty was enquired of. Now, I propose to show what that controversy was, and the whole history of it. As part of it has come before the Court, the whole should come.

Mr. ARNOLD. I object, your honor, because I do not see that it matters what was the cause.

Mr. RYAN reduced the question to writing and submitted it to the Court, as follows:

Have you answered the defendant's counsel, that there was a business difficulty between you and Judge Hubbell? Will you now state to the Court what that difficulty was, and when and how it arose?

The question was rejected by the Court. Ayes 11, nays 13.

ALEXANDER MITCHELL called and sworn; and was examined upon the same charge and specification.

Q. Mr. Mitchell, were you, in 1852, secretary of the Wisconsin Marine and Fire Insurance Company? A. I was.

Q. Do you know Judge Hubbell? A. I do.

Q. Do you recollect of receiving in the spring of 1852, from Judge Hubbell, a city bond of twelve hundred dollars?

A. I received such a bond, I think, in March, 1852. I cannot speak positively from whom I received it; but my impression is, that it was payable to Levi Blossom. I received the bond for the purpose of disposing of it. I made an advance of eight hundred dollars on it to Judge Hubbell, and renewed it to

pay over the balance when the bond was sold. I think it was issued the month preceding; I do not know the precise date.

Q. Did you know from Judge Hubbell on what account that bond was issued?

A. I have no recollection of receiving any information about it from Judge Hubbell. I sent the bond to New York to Messrs. Strahan & Scott, for sale.

Q. Was there any difficulty in selling it on account of its denomination?

A. There was some difficulty on account of its particular amount. Bonds of five hundred or a thousand dollars are the most usual. Bonds in intermediate sums or which are not in multiples of five hundred are considered irregular in New York. Our agents did not succeed in selling it, but they took it themselves. I then accounted for the balance of the bond to Judge Hubbell, and paid him the amount. The amount was passed to the judge's credit and drawn out.

Q. Was that bond ever returned to Milwaukee?

A. Yes, a law was passed in 1852, authorizing the city to fund its old debt. I got the bond back and replaced it, and by putting other matters with it I got a bond of a thousand dollars and one of five hundred.

Cross-Examination.—Q. Mr. Mitchell, was the negotiation and sale of that bond delayed on account of the denomination?

A. Yes, I think it was delayed on that account.

Q. Was there an additional difficulty on account of the situation of the city at that time, as to credit, &c.?

A. I think the money market was rather stringent at that time, and all kinds of securities were of slow sale that year. But part of the difficulty was undoubtedly on account of its denomination. I know the city credit stood pretty low at the time. I do not know how it was in New York.—After the law funding its debt was passed it was better at home, and I presume better abroad. I took Judge Hubbell's note for the eight hundred dollars advanced. I do not know that the bond was referred to in the note.

Q. Do you recollect whether at that time the judge offered to sell you a bond and you declined?

A. I do not know, I am inclined to think very likely he did.

Direct Examination Resumed.—Q. In accounting for the eight hundred dollars so advanced was it deducted from the sale of the bond?

A. The eight hundred was passed to his credit when the bond was sold. I received a note for eight hundred dollars at the time I took the bond. He paid the note and I passed the balance to his credit.

Q. Is that an ordinary way of doing business in your institution?

A. Well, not a very frequent way of offering securities.

Q. Is it usual in such cases to take a note for an advance. A. Yes, sir.

Q. Then both the eight hundred dollars and the balance were passed to the judge's credit at the time the bond was sold?

A. Yes, sir, and was drawn out by him on his checks.

W. W. GRAHAM wascalled, sworn and examined on the second specification of article second.

Q. Where do you reside?

A. In Milwaukee, and have resided there several years, my profession is attorney at law. I am acquainted with Judge Hubbell,

Q. Did you at any time receive from Judge Hubbell a note against Joseph O. Humble, for collection?

A. I received it to be sued. I received it on the 23d of November 1848. The amount was two hundred and fifty dollars, and it was made payable to Levi Hubbell or bearer. He wished me to sue the note immediately. Humble lived at that time in the city of Milwaukee. I received instructions from Judge Hubbell to sue the note in my own name, or in the name of some friend of mine in his court—in the circuit court of Milwaukee county—and I did institute a suit in in my own name in that court. Levi Hubbell was at that time judge of that circuit court in Milwaukee county.

Q. Will you state where the writ was returnable and where it was returned?

Mr. Arnold. Do you want to prove the record?

Mr. Ryan. No, sir; but, Mr. Arnold, you must perceive how I am embarrassed at every step by the absence of records. They are still retained by the clerk upon the advice of Judge Howe. I think they will soon be here. I don't wish, of course, to prove a record orally; but only to explain it so as to complete the evidence.

Mr. Arnold. Well, go on.

A. At the May term, 1849, the cause was called and two motions were pending—one a motion made by Finch & Lynde, as attorneys for the defendant, to set aside a sheriff's sale for insufficiency; and the other, filed by myself, that the sheriff might have leave to amend his return.

Q. What was the form of the action?

A. Assumpsit. The writ was a summons. At that time, when the cause was called, at the May term, in 1849, Judge Hubbell offered to send the cause to another county for trial. He proposed to Mr. Finch to do so; Mr. Finch replied that there was no need of that—that there was no defence to it—that he should not appear in the suit.

Q. What did he do with his motion.

A. I suggested to him, that as he had filed a motion, he had better withdraw it.—He did so, and judgment by default was directed against the defendant, and the clerk was directed to ascertain the amount of damages. That was done, and Judge Hubbell rendered a decision in the cause.—Judge Hubbell presided in the court at that term.

Q. Was any property seized upon an execution upon that judgment?

A. There was some real estate seized and the property was sold. I was not present at the sale. I only know from the record who was present in behalf of the plaintiff.

Q. That is not the knowledge I ask of you, sir; did you make any record at, or after the sale, as to who was present to represent the plaintiff in the judgment.

A. The Judge told me that Henry P. Hubbell would bid off the property.

Q. Was any money paid to you upon that sale, as the plaintiff in the judgment? A. There was not.

Q. Have you any means of knowing how the amount of the bid, which was made upon the property at the Sheriff sale, was accounted for—how the purchase applied upon the judgment?

A. The Sheriff, after the sale, brought the execution to me, and desired me to receipt the damages upon the execution;—which I did.

Q. Why did you receipt the damages upon the execution, or rather, how were those damages satisfied?

A. By sale of the property to Henry P. Hubbell—in other words, the purchase of the judgment was taken for damages.

Q. By whose authority was that done? A. By the authority of Judge Hubbell.

Q. Subsequently to that time, were you a party to the foreclosure of the mortgages? A. I was.

Q. Who was solicitor for the complainant?

A. I could not state. I was made party to one suit; that was all. I was not made a party to the sale.

Q. Who was purchaser at the foreclosure sale?

A. I have no means of knowing.

Q. At the time of the disposition of the suit brought by you upon the promissory note, was any written consent given that Judge Hubbell might proceed in court upon that cause? A. Not to my knowledge.

Cross Examination.—Q. At the time the suit on the promissory note came up in court, did Judge Hubbell himself suggest that the suit was to be sent away?

A. He offered to Mr. Finch to send it away, as if there was a cause for sending it. The cause was not mentioned; but the manner in which he offered to send it away, led me to know that Mr. Finch knew what the cause was.

Q. Now, Mr. Graham, don't you recollect that the Judge did state to Mr. Finch, that he was interested in the note—the owner of it in fact; and that that was what led Mr. Finch to send it away? A. I do not recollect.

Mr. BLAIR sent to the President the following question:

Did Mr. Finch withdraw his appearance in the case of Graham vs. Humble?

A. He did, and said he would not appear.

Mr. ARNOLD. Q. Finch & Lynde had appeared in the suit? A. They had.

Q. On this occasion did he withdraw his appearance?

A. The judge offered to send the cause away, and Mr. Finch said there was no need of that, as he would not appear in the suit.

Q. At the time of bringing this suit, was there any other court in which you could have brought it—was there no county court? A. There was not.

Mr. RYAN. That is a matter of law, Mr. Arnold, that we all understand. It is admitted that there was no county court at the time.

Direct Examination resumed.—Q Was there any other appearance entered, except the motion to vacate the sheriff's return?

A. That was the only motion, and that motion was withdrawn.

Q. What was Humble's occupation at the time?

A. I think he was a dealer in lumber and I believe he was interested in vessels, or an owner of vessels.

Q. Was he stationary at Milwaukee; or moving a good deal about the Lakes?

Mr. ARNOLD. What is the object of that question?

Mr. RYAN. The question is suggested by your question as to the County Court. If he was frequently absent from Milwaukee, in the course of his lumber business, there were other Courts in which the suit could have been brought.

The Court adjourned until 2½ o'clock P. M.

AFTERNOON SESSION.

ASAHEL FINCH, jr., was called, sworn and examined upon the second specification of the second article.

Witness. I reside in Milwaukee. My profession is attorney and counsellor at law. I am acquainted with Judge Hubbell. I recollect a suit in the Circuit Court of Milwaukee county, of Graham *vs.* Humble. I was attorney for defendant. The suit was instituted by Mr. Graham. I hesitated about attending to the case. He stated to me that he had a defence and would furnish me the facts. He left Milwaukee for Michigan, just across the lake I believe, and was to return again, to give me the details of the defence, but he did not return in time. In the mean time I observed, as I thought, a defect in the service of process, and made a motion to set aside the service. The case went over the first term, upon that motion, and during the vacation, I saw Mr. Humble. He again agreed to put me in possession of the facts he had promised me, but by the next term he had failed to do so. I think it was the fall term, and it must have been in 1848—I do not recollect in what year exactly. The cause was called in its order upon the calender, and Judge Hubbell made the remark that he believed he had some interest in the suit, and he thought he must send it away. I replied that I had not been put in possession of the facts which had been promised me, and I should step out of the case. Some conversation passed between the Court and the counsel of Mr. Graham, who appeared in person, and I thereby did withdraw my appearance entirely in the case, and I know nothing of the case, of my own knowledge, beyond that, except as I am informed by Mr. Graham and Judge Hubbell. I believe that a judgment was entered upon it.

Q. Was the motion, founded upon the sheriff's return, which you had made withdrawn from the suit?

A. I cannot say as to that. I only wished to withdraw my appearance in the case. I did not wish to appear in it at all.

Q. Were you asked, and did you give, or did you refuse, any assent on behalf of Humble, that the cause might remain there, in that Court, to be determined?

A. I could not have given any such assent, because I withdrew from the case. I am not aware that I did give any such assent. I had, sometime before, determined not to appear in the suit at all.

Q. Who presided throughout that term and in that county?

A. Judge Hubbell.

Cross Examination.—Q. In what manner did Judge Hubbell explain his interest in the note upon which that suit was brought?

A. I do not recollect that he explained it at that time to me at all. It was in open Court, with a full bar, and when the docket was called, he said he thought he should be under the necessity of sending this case away, and remarked—I think I am interested in that suit.

Q. Did you then reply that there was no need of sending it away?

A. I do not recollect what reply I did make; possibly I made such a reply. I recollect that something passed between the Court, myself and Mr. Graham, in relation to the case; but I don't recollect in giving any thing like a direction in the case, because at that time there was some difficulty existing between myself and my client, and I recollect of being quite glad to get out of the

matter. It is possible that when I said I should withdraw from the suit, I might have said it was unnecessary to send it away; yet it is my impression that I did not intend to give any qualified or unqualified assent to its removal from that Court.

Q. Have you since that time ever said, that there was nothing wrong about that matter?

Mr. RYAN. I have no objection to the witness being enquired of as to his conversation with the Judge, but whether the witness said to the Judge, that he did or did not think there was any thing wrong in it, is not evidence here. It is for the Court, not for the witness, to determine that question.

Mr. ARNOLD. Have you said any thing since about that occurrence; and if any thing, what?

A. I have had some conversation with Judge Hubbell about the case, but not until since my examination before the Committee.

Q. Do you recollect the circumstance of meeting Judge Hubbell in the street and in forming him that they had been digging up, or raking up the affair of that old judgment.

A. I recollect nothing of that kind; but after I had testified in this case before the Committee, I met Judge Hubbell nearly in front of my office, and he entered into conversation with me, in relation to my testimony before the committee. He asked me what I testified to, and I told him one thing was in relation to Graham *vs.* Humble. He then made some statement to me as to what it was, which Icannot recollect. It was some passing remark—a matter of but little moment. I replied something to him, but I do not recollect what. I have no doubt that I did state to him, that so far as it concerned him, it was a matter of but little moment.

Mr. RYAN. I object to that answer. I suppose the opinions of the witness are not very relavent evidence.

Mr. ARNOLD. Do you recollect as a reason for giving your opinion, that it was of little moment, and that you intended to withdraw your evidence?

A. I don't think I added that. I have had one or two conversations with the Judge and with Mr. Graham, and Mr. Graham endeavored to convince me that I assented to that case being removed. I could not have consented to the case being withdrawn when I had withdrawn my appearance.

Q. Do you insist upon the statement you have just made to Mr. Ryan?

A. I insist this—that Mr. Graham attempted to impress upon my mind that, I consented that the case should remain in that court. I could not remember that I did consent, either to its remaining or to its removal, and could not be convinced.

JASON DOWNER was called, sworn, and examined on the third specification of article second.

Witness. I reside in Milwaukee—and am a lawyer by profession, and am acquainted with Judge Hubbell.

Q. Do you recollect a bill of foreclosure on behalf of William Y. Miller against Joseph O. Humble and others? A. I do.

Q. Who was the solicitor who filed the bill? A. Finch & Lynde.

Q. What was your connection with it?

A. I was one of the defendants as a judgment creditor on the premises; but not exactly in my own name. My name was to the bill, but the judgment

did not stand in my favor. I was the assignee of the judgment. Mr. Graham was a defendant also in that bill. There was a decree of foreclosure in that suit. During the pendency of that suit, or before the sale of the mortgaged premises, I had some conversation touching that suit with Judge Hubbell. I think the first conversation I had with him was immediately after the rendition of the decree of the foreclosure, or within some two or three days after that. The foreclosure suit was in the circuit court for the county of Milwaukee.

Q. Who presided in the court at the time the decree was rendered?

A. I do not know that I was present when the decree was rendered. My impression is, that I saw the decree afterwards, and saw that it was signed by Judge Hubbell. After the decree, and before the sale, and, perhaps, after the rendition of the sale, I had several conversations with the judge. It may be somewhat difficult to distinguish what was said in one from what was said in the others. He spoke about his interest in the judgment in the name of Graham, and in the certificate of sale. He stated that he, in substance, was the owner of that judgment, and of the sheriff's certificate of mortgaged premises, and wished to take such steps as would protect his interest; he inquired of me the amount of my judgment, which was prior to the judgment in favor of Graham, in point of time. The amount of the conversation was, that he wished to protect himself, and he wished to make some arrangement as to the money—to get some time in case he had to bid off the premises, or to procure them to be bid off, so as to protect himself.

Q. Did he say any thing, at that time, in regard to Mr. Graham's management of the matter?

A. He did at one time, but whether it was at that time, or at a subsequent period, I am not positive; my impression is, however, that it was at that time. He said that if Graham had conducted the suit properly, it might have been collected out of the personal property without selling real estate. Mr. Finch and myself had agreed, as far as I was concerned, upon the terms of the rendition; my interest was to be provided for. I had put in an answer setting up my claim. After that he obtained the decree. I think he showed me the decree before it was carried to the Judge to sign. At the first conversation, the Judge wished me to see Mr. Finch, and see if some arrangement could not be made about getting time upon the money due upon the mortgage. I spoke to Mr. Finch, and he said he must have the money. I afterwards saw the Judge, and told him what Mr. Finch said. As to my claim, I told him that I wanted the money, and within any reasonably short time. He executed a note to me to that amount, and I gave him my receipt to that effect. The second time I saw the judge was just before the sale; possibly a week after the first time I saw him. He informed me that Henry P. Hubbell had the certificate of sale and judgment, and that he (Henry) would attend the sale, and bid upon the property up to a certain amount, and said if it went beyond that somebody else must purchase. There was, I think, some conversation about Mr. Rice bidding it in, though I had very little conversation, myself, with him upon that subject. I believe they had understood that Rice would attend the sale, and, perhaps, would bid.

Q. Have you stated all the conversation you recollect before the sale?

A. I think I have, before the sale.

Q. Were you present at the foreclosure sale?

A. No, Sir; I sent up a person to attend the sale, with directions to run up the property sufficient to cover the amount of my decree—not beyond that. After the foreclosure sale, the Judge came to my office and stated that the premises had been bid off by Henry P. Hubbell, and that he (the Judge) had to raise the money. He wished to know if I could lend him some money for the purpose of paying the decree. I told him that I had no money on hand at that time to loan, but that I would do with him as I said before, as far as the amount coming to me was concerned. If he would give me his note for that I would give him a receipt. He went away at that time, and a few days afterwards we arranged the amount of money that was coming to me. He gave me his note payable the first of the following May, with interest, and this was in January. I think my interest was a hundred dollars and some cents. That foreclosure sale was in the month of January, 1851.

Q. Were you present in court when the report of sale of the commissioner was confirmed?

A. I do not recollect whether I was or not. I cannot state when that report was confirmed—whether immediately after the sale or not till some time afterwards. I was present some time after the sale, at the request of Mr. Leander Winant, commissioner. He was a young man reading law in my office at the time; and supposing that I might perhaps become myself the purchaser of the property, and wishing to make the expense as small as possible, I procured him to be appointed commissioner. It appears afterwards, that after paying the amount of my judgment, there were some surplus funds which ought to have been paid into court, yet they had not been paid in, and the money had not come into Winant's hands. He wished the matter straightened out some way. Some time after that I spoke to Judge Hubbell in open court about the matter, saying that the commissioner wished it straightened up. He said he supposed I knew to whom the surplus funds were going, and that they were going to Henry P. Hubbell, who held the certificate. I told Mr. Winant what he said, and afterwards an order was made that the surplus funds be paid. I think that I suggested that Henry P. Hubbell should draw a petition claiming the surplus funds. I am not able to state whether I drew the petition. I recollect that the matter was straightened out in that way, and the surplus funds were paid to Henry P. Hubbell.

Cross Examination.—Q. You say you entered your appearance in that suit?

A. Yes, sir.

Q. Finch & Lynde of course appeared?

A. Yes, sir. I think there was no appearance except myself for the defendant. Mr. Graham, I think, did not appear.

Q. Did either Finch or yourself raise any objection to the matter going on in that court? A. Not a word of it.

Q. So long as Graham did not appear, you were protected? A. Yes, sir.

Q. How much was the surplus fund after the sale?

A. Not far from ninety dollars. I have been informed that the certificate of sale was three hundred dollars. I suppose the sale was in all respects fairly conducted. I was not present, but I know nothing to the contrary. I never heard any objection to the sale.

Q. In the course of the proceedings in that suit, from beginning to end, do you know of any thing that was irregular or out of the usual course?

A. No, sir; I know of nothing except the fact that one defendant did not appear. There were other defendants, but I think no one appeared but myself. No one made a plea on the demurrer excepting myself.

Q. Would you have been willing to bid the premises off at a higher price than they were sold for?

A. No, not at that time. I should have been willing to have given a trifle more than my claim. My purpose at the suit was only to protect myself.

Senator BLAIR. Did you know of Judge Hubbell having an interest in the suit previous to the decree?

A. I think I had some intimation upon that subject, though nothing positive until his conversation just after the rendition of the decree. Still, I had supposed he owned the judgment of Graham. I was not aware that it was originally rendered by him. I, myself, had some business in cases in which he had been counsel, and being aware of that, some other circuit judge had rendered judgment. I supposed, however, he had an interest in that judgment. I supposed so from some casual remarks between him and me some time before the commencement of this chancery suit.

Q. Well, you have practised at the bar ever since Mr. Hubbell went upon the bench; your practice is probably as extensive as any other lawyer?

A. Well, I don't know as to that—perhaps so.

Q. After Judge Hubbell went upon the bench was not another Judge sent up to dispose of causes in which Judge Hubbell had been engaged as counsel?

A. Judge Larrabee or Judge Whiton I recollect heard a cause in which he had been engaged as counsel.

Q. Do you not know also of a great many others in which Judge Hubbell had been concerned as counsel, which were sent away to other courts and judges? A. Yes, sir; I know several.

Direct Examination resumed on the first specification to article four.

Q. Were you present in the circuit court of Milwaukee county, when any action was taken towards removing the cause of Howe and others against Cogswell & Kane, defendants, to another county?

A. I cannot say that I was when any thing was done about sending it away.—Judge Hubbell was upon the bench.

Q. What did Judge Hubbell say?

A. The cause was called on. Something was said by some one respecting the case. The remark was made by the Judge, that he should have to send the cause away, as he had been of counsel in it. I am not certain for whom he said he had been counsel. I do not recollect the time that suit commenced.

Cross Examination.—Q. You cannot recollect whether the Judge said whether he had been of counsel for Kane?

A. My impression is, that he said he had been of counsel, simply. That was in open court. Q. Did he qualify that expression in any way?

A. Something was said about the case. To some motion or to some remark he said—"Well, I think I shall have to send that suit away"

Q. Was it not the fact that that cause had been commenced after the Judge went upon the bench?

A. My impression is, that it commenced at least a year after he went upon the bench. My impression is, that he said something like this—that he did not think he ought to try the case, whether he qualified that remark, as being

counsel for one of the defendants, or not, I don't know. The impression which I got was, that he had been counsel for the defendants, but that he exactly said so, I could not state. I don't think I can remember all that was said; but little was said at any rate. I was retained by the defendant in the case, but never took an active part, myself, in the suit, as Kane had several other attorneys.

GEORGE COGSWELL was called, sworn and examined on the first specification of article four.

Q. Had Judge Hubbell been of counsel for you and Kane in the transactions which were involved or in controversy in the suit of Calvin W. Howe and others against yourself and Kane? A. He had.

Q. Was the bill of Howe and others against yourself and Kane, filed upon judgment against you; and did it seek to establish a partnership between yourself and Kane? A. Yes, sir.

Q. Had there been a previous creditor's bill filed against yourself and Kane?

A. There had.

Q. Do you recollect the names of the complainants in that bill?

A. The firm of Parsons & Lawrence were the complainants.

Q. Who were the counsel of yourself and Kane in the bill of Parsons & Lawrence against you and Kane?

A. Judge Chandler was my solicitor, and Judge Hubbell signed it as of counsel. Kane's answer was drawn by Judge Hubbell as solicitor, and I think Judge Chandler signed it as counsel.

Q. Was that suit of Parsons & Lawrence against yourself and Kane, instituted before Judge Hubbell went upon the bench?

A. It was. It was in the county of Walworth, in the Territorial District Court.

Mr. PETTIT was called, sworn, and examined.

Q. Are you clerk of Walworth county court? A. I am.

Q. Have you the records and papers in the case of Parsons & Lawrence against Cogswell, Kane, and others?

(Mr. Pettit here produced the papers, bills, and answers in chancery in the case, which were read to the Court.)

Mr. Cogswell resumed the stand.

Q. Are you acquainted with Judge Hubbell's hand writing?

A. I used to be tolerably well acquainted with it. I am also acquainted with Judge Chandler's writing.

Mr. ARNOLD. You need not go to the trouble of proving the hand writing; it is all admitted.

Mr. RYAN. The second demurrer is in the hand writing of some clerk of Judge Hubbell's. The body of the second answer is in the hand writing of the witness, Mr. Cogswell. The signatures are admitted to be Judge Hubbell's.

Mr. LAFAYETTE KELLOG was called and examined:

I am clerk of the Supreme Court. I have some of the papers in the case of Howe and others, against Kane and Cogswell, defendants. I suppose some of the Judges have taken some of the papers to write their opinions; I supposed they were in the office; I never missed them before.

Mr. RYAN. The original papers in the main body of cause, must be here, because the whole case is at an end? Witness. Yes, sir.

Mr. ARNOLD. Mr. President, I have the consent of Mr. Ryan to make a suggestion to the Court. These papers are now about to be read. We do not design to read them again in the argument of this case. We therefore desire the attention of the Court to them now, to see how near the subject matter of this suit corresponds with the suit, or subject matter, or papers which have just been read.

Mr. RYAN. An order was taken at a term of the Washington county Circuit Court, dismissing this suit as to Charles I. Kane. Subsequently an order was made, affecting that order, and restoring the cause as to Kane. From that order an appeal was taken by Kane, to the Supreme Court. After the order restoring the cause as to Kane, a final decree was obtained; first upon the order dismissing the bill, and second, upon the order restoring it without notice; and then a final decree in the cause, as against the defendant, Cogswell. At the next term of the Supreme Court, the order restoring the cause, as to Kane, and dismissing the cause as to the bill, was reversed on the ground of want of service of papers upon Kane. Then the Court made another order, restoring the cause as to Kane. From that order this appeal was taken, and it was that order which was reversed. The only question raised in this suit, is as to Judge Hubbell's acting as counsel for Kane.

The reading of these papers was proceeded with until the hour of adjournment.

NINTH DAY.

THURSDAY, June 16.

MORNING SESSION.

The reading of the papers in chancery, was continued for some time.

Mr. COGSWELL was recalled.

Q. Are you the George Cogswell mentioned in the records which have been read? A. I am.

Q. In making the sale to Kane of the stock of goods spoken of in these papers, had yourself and Kane any counsel employed; and, if so, who was your counsel? A. We had. We employed Levi Hubbell.

Q. Will you state to the Court what intercourse you yourself, or Kane, or either of you had with Judge Hubbell at the time of, and subsequent to that sale?

A. Previous to the pretended transfer of the stock of goods, at the time we were taking an inventory, Mr. Kane and myself went several times to Judge Hubbell. I recollect that we consulted with him in regard to the transfer of that stock of goods. We asked him after we had got that inventory taken, to draw a bill of sale. He gave us a form of one. That is the substance of what I recollect.

Q. Prior to being in business yourself, had Judge Hubbell been your counsel?

A. No, sir! That was my first employment of counsel.

Q. Before the sale was made, was Judge Hubbell consulted by yourself or Kane in regard to the advisability of the sale? A. I cannot say that he was.

Q. About how long after that sale did your creditors first attempt to impeach or question the sale?

A. Some of them threatened an attachment just about that time. They did get out an attachment a few days afterwards.

Q. Was the bill of Parsons & Lawrence the first actual proceeding taken to impeach that sale?

A. Nothing but the attachments, sir, were issued; they were not levied.

Q. While the attachments were being issued, were yourself and Kane in the habit of consulting counsel on that subject; and if so, what counsel?

A. On that subject? Judge Hubbell.

Q. Will you state to the Court the subject, and give the details of your and Kane's conversations with Judge Hubbell while the actachments were threatened.

A. I am not able to give the details. We were there at his office several times together. We told him we were threatened with attachment, &c. The particular matters I cannot state.

Q. Did you, or Kane, or either of you, have any counsel retained to resist the levy of the attachment; and if so, who? A. We did. Judge Hubbell.

Q. When was Chandler first retained in relation to that subject?

A. It was after the filing of the bill of Parsons and Lawrence. I cannot recollect the date.

Q. Who was he retained by? A. By me.

Q. Was he, or was he not retained by Kane, as far as you know?

A. I do not know as Mr. Kane ever spoke to him on that subject.

Q. Do you know who, if any body, prior to the alleged sale of goods to Kane, had been Mr. Kane's general attorney?

A. I do not know of his having any one.

Q. When the bill of Parsons & Lawrence was filed, had yourself or Kane any other counsel besides Judge Hubbell and Judge Chandler?

A. Not to my knowledge.

Q. How did the counsel, Hubbell and Chandler proceed? Did they act separately or jointly, and how far jointly, as counsel for both?

A. Well, up to the time Kane's answer was drawn or previous to it, I believe Judge Hubbell assisted on the argument and demurrer. After Kane's answer was drawn and I saw what it was, I went to Judge Chandler, and told him I wished him to draw my answer. My answer is in my own hand-writing. I drew it from Judge Chandler's copy. Judge Hubbell drew Kane's answer.

Q. When the suit of Parson & Lawrence was ordered to be removed from the Milwaukee county circuit court to Walworth county circuit court, were you present in court? A. I do not think I was.

Q. Have you, at any time, heard Judge Hubbell state on what ground that suit was removed to the circuit court of Walworth county?

Mr. KNOWLTON. Does not that appear from the record?

Mr. RYAN. It does not. It says—by consent of the counsel.

Mr. ARNOLD. That is the reason, is it not, sir?

A. I do not recollect that I have heard him state it.

Q. In the suit of Howe and others, did you ever show a copy of Kane's answer to Judge Hubbell? A. I do not recollect that I did.

Q. Did you ever have any conversation with him in regard to the answer of Kane and others?

A. I have. It was shortly after the answer was filed. I said to him in substance what the answer was; what Kane had sworn to; and particularly in

relation to the answer as it regarded the giving up of those notes for the mortgage. I told that the whole answer was untrue—almost every word; but particularly that part of it. I had a paper that was signed by him at the time, showing the transaction—showing that he had received those notes and given me that mortgage; which paper I showed to Judge Hubbell. He remarked about it something like this—that it was a good thing there was still a grand jury in the land, or something of that kind. That is all I recollect definitely. We had quite a conversation about it.

Q. After the transfer, had or not you or Kane, or you or Kane jointly, consulted or advised with Judge Hubbell, in relation to any subsequent transaction or any other matter growing out of that sale of the stock of goods, p[illegible]ng the notes, &c.

A. We had. At the time after giving up the notes and taking this mortgage, we both of us saw Judge Hubbell together and told him what we had done, and he made the remark that it made no difference. The creditors would get that mortgage and that bill. We told him we did not care if they did, for the mortgage was not good for any thing.

Q. Is that the mortgage in the State of New York, spoken of in these pleadings?

A. It is. The amount paid for the mortgage was ten dollars.

Q. Who made that remark to Judge Hubbell about its being good for nothing? A. Kane.

Q. How is the fact. Were or were not yourself and Kane there, or both of you, in the habit of consulting with Judge Hubbell, in relation to these matters up to the time that he went upon the bench? A. We were.

Q. Did Judge Hubbell continue to act as counsel in the suit of Parsons & Lawrence, up to the period that he went upon the bench? A. He did.

Q. At the time of the sale or transfer of the stock of goods by yourself to Kane, did either yourself or Kane, or both of you, or not, communicate to Judge Hubbell whether you had, before or after the sale, or both, a joint interest in the stock of goods and business? A. I do not think we did.

Cross Examination.—Q. When did you go to Milwaukee?

A. I went first in January, 1845.

Q. Did you go to enter into business?

A. I went to see what I could do. Kane came west with me. We entered into business in the Spring of 1845. I had known Kane three or four years before going to Milwaukee. We were intimate friends.

Q. When you commenced business in Milwaukee what was your sign over your door? A. George Cogswell.

Q. In what capacity, to the world, was Charles I. Kane employed?

A. As a clerk.

Q. Your clerk? A. Yes, sir.

Q. How long did you continue in business in that store under the sign of George Cogswell?

A. About a year or until the spring of 1846.

Q. During that time did you go to the State of New York to make large purchases of goods?

A. I went to New York and made purchases, but not very extensively, during the summer of 1845. I purchased about ten thousand dollars worth of goods in my own name.

Q. In March, 1846, what was the amount of your liabilities in the State of New York? A. I suppose some 13 or 14,000 dollars.

Q. How did you discontinue your business in 1846?

A. I put up Mr. Kane's name instead of mine; took an inventory of the stock and transferred it to Mr. Kane. I sold out tohim, so far as the public is concerned generally. I executed a bill of sale to Kane, and put him in possession.

Q. Who drew that bill of sale?

A. I think Mr. Kane copied it from a form that we got of Mr. Hubbell.

Q. Up to the night after you made or executed that bill of sale, and delivered the goods, will you state to the Court whether you had any consultation with Judge Hubbell?

A. Yes, sir; I think I did, and got from him a form of bill of sale.

Q. You *think* youdid? Please speak positively. Was that the fact or not?

A. As I remember it was.

Q. You state that prior to the sale, Judge Hubbell was not your counsel. I what capacity did you go to Judge Hubbell before the sale, if he was not your counsel? A. I went as any man would, to counsel with him at that time.

Q. You answer that before the sale he was not your counsel. Now was he, or was he not your counsel before the sale was consummated?

A. Before the sale was fully consummated, he was.

Q. You answer that before the sale, Judge Hubbell was not consulted about the validity of the sale?

A. I cannot say that he was.

Q. You say that your creditors threatened an attachment, and did get one; was it not after this threatened attachment, and after the sale had been consummated, that you and Kane went to Judge Hubbell in the night, and showed him the bill of sale, for the first time, and then explained to him what you had been doing?

A. After the sale had been consummated? My impression is that we went there before the sale was made.

Q. Did you or not, after the consummation, and when the attachment was threatened, go with Kane to Judge Hubbell in the night time—I mean by that at an unusual hour in the night?

A. I recollect of going to him at several times, but do not recollect of going at an unusual hour.

Q. Do you recollect of going to Judge Hubbell's room in the United States Hotel and from there going around with him to his office? A. I do not.

Q. Do you recollect the particular occasion I have tried to call your attention to?

A. I do not recollect any particular occasion. I recollect of going several times.

Q. After this sale had been made by you to Kane, did you not go to Judge Hubbell and tell him what you had done, showing him the bill of sale, explaining the whole transaction, and retain him as your counsel?

A. Myself, or myself and Kane?

Q. You, sir, alone?

A. I may have been there several times alone.

Q. Mr. Cogswell, you know what I want; will you tell me whether you did not yourself retain him personally as your counsel?

A. I told you that we went to retain him.

Q. On the contrary did you not tell him that Mr. Kane did not want him?

A. I did not.

Q. Did you not at that same time, tell Judge Hubbell, that Kane was in possession of that Store, and would resist any attachment that was threatened?

A. I think that was the understanding between Mr. Kane, Mr. Hubbell and myself, that we would resist any attachment.

Q. Did you not at the same time, tell Judge Hubbell that the sale was in all respects fair and *bona fide*, that Kane had paid for the goods, and was in possession, and explain to him how payments were made?

A. I cannot say that I did. In regard to saying that it was a *bona fide*, I cannot say that I did.

Q. You shall not escape under a technicality. Did you not say it was a fair and honest sale?

A. I have no recollection of saying any thing of the kind. It was six or eight years ago, and I do not remember what I did say.

Q. Did you not to Judge Hubbell, and to every body, declare, and always declare, that that was an honest sale?

A. Not to every body—to the world generally, I did.

Q. Did you not to Judge Hubbell, in all your interviews with him?

A. No, sir! I never told him positively to the contrary.

Q. Did you ever tell him with a want of positiveness?

A. No, sir! I suppose he had penetration enough to know how the matter was.

Q. Had he previous acquaintance with you enough to lead him to suppose that it was a fraudulent sale?

A. I did not know but my short acquaintance with him might show that I never told him that it was a fraudulent sale, up to the time he went upon the bench.

Q. Did you not always assert to Judge Hubbell, that Charles I. Kane and all the rest of the Kanes, would claim and swear that you had no interest whatever in the goods? A. No, sir!

Q. Did you not tell what to put in your answer to the bill of Parsons & Lawrence? A. No, sir!

Q. Did you not employ him to draw the answer of the Kanes?

A. I did not; the answer of Charles Kane I think Charles Kane directed and got up his answer with Judge Hubbell. When I saw him I told him I did not want him to draw mine; but I supposed Mr. Kane and Church would swear to the same thing.

Q. Were they not all one answer as one paper?

A. Very nearly one answer; I knew the denial of Kane's answer.

Q. Did you ever say to Judge Hubbell or to any body else, that that answer was false?

A. I insinuated to Judge Hubbell that it was false as regards Charles I. Kane. I said I could not swear to any such answer, and I would get Judge Chandler, or somebody else, to draw mine.

Q. Did Judge Hubbell ever tell you that if you had any property in the hands of Charles I. Kane you had better look out for it?

A. Not that I recollect. At any rate, I never told him individually until after

he was upon the bench. I left Milwaukee awhile, and resided in Detroit for the purpose of getting rid of answering the bill of Parsons & Lawrence. I supposed processes would be issued.

Q. Did Judge Hubbell, while you were in Detroit, by your sister-in-law, say to you that if you had any property in the hands of Kane you had better look out for it?

(To this question the Reporter did not hear the reply.)

Q. Did you ever state to Judge Hubbell that that answer of Kane's was true?

A. I never told Judge Hubbell, or any man, that it was true.

Q. Did you tell him that they would swear so, and it was all right?

A. I don't recollect of ever telling him that Charles I. Kane would swear so. The others I supposed would, and I told him so.

Q. Was not all your talk and conduct based upon the assumption to the world that that was a *bona fide*, honest sale, and intending to maintain that sale against the persons? A. Yes, sir.

Q. When did your relations of friendship with Charles I. Kane cease?

A. Sometime in the spring or summer of 1849.

Q. Did you then turn round and aid, with your assistance, the New York creditors to impeach that sale? A. I did.

Q. Did you communicate to them the material on which these bills of Howe and others was gotten up? A. I did.

Q. You came in as a defendant, did you not, and admitted the truth of the statements in the bill? A. I did.

Q. Did you assist Judge Chandler in the draft of that bill? A. I did.

Q. Did you retain him for the purpose of instituting proceedings under that bill?

A. He had been already retained in the Parsons & Lawrence suit. I think it was at my instance that they retained Judge Chandler.

Q. Have you ever, since that time, taken an active part, to the extent of your ability, against Kane, and to render that bill successful? A. I have.

Q. Have you frequently threatened that you would follow Charles I. Kane as long as you lived, or had a cent to spend?

A. I have probably said something to that effect.

Q. Have you not frequently and publicly and often said things to that effect?

A. I think I have.

Q. Have you been before the grand jury and procured an indictment against him on two different answers about that sale? A. I have.

Q. Have you not been to the grand jury at several and successive times for the purpose of indicting Charles I. Kane for perjury, in sustaining these answers to that sale that you made to him?

A. I have been to three different grand juries, and I don't know but four.

Q. Have you not been a standing customer around the door of the grand jury at every court.

A. I have stood around considerably—I don't know about being a customer.

Q. Now, in your repeated oaths as a witness, have you not stated precisely in substance to the contrary to what you have, for many years, maintained to the public to be true in regard to that sale? A. From about 1846 to 1849, I have.

Q. Were these indictments for perjury argued on demurrer, in the circuit court of Milwaukee county?

A. I have heard that they were. I did not hear them argued.

Q. Who were the counsel who appeared for Charles I. Kane, in regard to the demurrer to these indictments? A. I cannot say.

Mr. Ryan. I can tell you, Mr. Arnold, if you are really desirous to know. The first demurrer was argued by James S. Brown and myself; and the second by Mr. Arnold and myself; but Mr. Arnold went off to the Whig Convention, at Baltimore, and left me to argue it alone.

Mr. Arnold. I beg your pardon Mr. Ryan; I argued it before I went to Baltimore.

Mr. Ryan. No, sir; you did not.

Mr. Arnold. You are certainly mistaken I argued it on the Saturday before I left for Baltimore.

Q. Do you know who drafted the indictments that went to the grand jury in these cases?

A. I do not of my own knowledge.—Judge Chandler went into the grand jury room in one instance, I believe.

Q. Did not Judge Chandler appear on the indictment in one of the demurrers?

A. I think he did not.

Q. Did you not retain Judge Hubbell to act in any of the matters that grew out of that sale, and tell us, in fact, whether you did not pay him?

A. He came to the store or sent his bill there, and it was paid out of the funds of the store. Whether the bill was made out to me or not, I cannot say. I think the first bill was, but the others I am not sure of. I cannot state when the last time was that I settled with Judge Hubbell, and paid him for his services.

Q. Can you remember when the last professional act was done for you by Judge Hubbell, and what it was?

A. No, sir; I cannot.

Q. So far as your representations to Judge Hubbell were concerned, was it not when he was acting as your counsel and your attorney in the matter of that sale to Kane?

A. No, sir. He was acting for Kane and me?

The Court here took a recess till 2½ o'clock, P. M.

AFTERNOON SESSION.

Cross-examination of Mr. Cogswell continued by Mr. Knowlton.

Q. Mr. Cogswell, I did not distinctly understand your testimony this morning. Let us see if we cannot bring it out a little clearer. Was any person present when you made that sale, or pretended sale?

A. Yes, sir. Samuel Church and David Wallingford. Church resides at Wauwatosa; Wallingford is dead.

Q. Did you and Charles I. Kane talk over the preliminaries of that sale, the terms, the manner of payment, &c., in their presence?

A. We did, but I do not remember what was said on that occasion between myself and Kane.

Q. Do you remember this, that there was any thing said in relation to Mr. Kane's having time for the purchase money of the goods? A. I do not.

Q. Do you remember of stating in their presence that this sale was fictitious, to cover up the transaction?

A. There might have been something said about its being real or ficticious. I think Kane stated that it was real, and I did not contradict it.

Q. Were they present the whole time?

A. No, sir, they were not. Mr. Church helped take the inventory. I think we had not completed the inventory when we went to Judge Hubbell to get a bill of sale.

Q. Do you recollect of saying to Judge Hubbell at that time, that that was a fraudulent transaction? A. No, sir, I do not.

Q. Did either of you carry an idea from which either of you or he, could infer that the transaction was not a fair one?

A. I do not think we did at that time.

Q. Did you have any communication with Judge Hubbell in relation to this transfer, after you had called upon him to get a bill of sale, until after that bill was executed by you to Kane? A. I do not think we did.

Q. Was Kane's name hoisted after yours was pulled down? A. Yes, sir.

Q. How long after that transaction was it before you heard you were likely to be prosecuted by attachment?

A. But a very few days. I think indeed we had heard of it before we had made the sale. Yes, I am sure we had. It was talked over between us. We again heard of it shortly after having executed the bill of sale. Three or four days after that sale, one suit was commenced against us, of which we informed Judge Hubbell, and said we wanted him to defend it.—Kane was with me at that time; I am positive of that. I cannot say that I said it, or Mr. Kane; I cannot remember whether Kane made the proposition to retain him, or whether I made it myself.

Q. Yes! But I want you should remember. *Which* was it, you or Kane, who spoke to Judge Hubbell to retain him in that case, or in any other case?

A. I cannot say.

Q. How long was it before the commencement of this suit in Judge Miller's court and its removal to Walworth county, that you retained him.

A. A very few days afterwards.

Q. I mean the suit in equity, that was sent to Walworth county.

A. I think that was rather more than a year after. I defended against that attachment suit, and judgment was obtained against me. Judge Hubbell appeared for me in that case. When the chancery suit was commenced, I think I informed him of that fact. I do not think I wanted him to draw an answer for me in that case. I employed Judge Chandler to draw that answer.

Q. Did you say any thing to Judge Hubbell about drawing the answer of Kane. A. Yes, sir.

Q. Did he tell you he would draw it?

A. I think the first conversation I had with him about Kane, was when I saw the draft. I mean to be understood as saying, I could not swear to that answer, and on that account, I would get somebody else to draw my answer. That was the sum and substance of what I told him on that occasion.

Q. Do you remember about the time your answer was being drawn, of requesting Judge Hubbell to confer with Judge Chandler, in relation to the draft of your answer?

A. I do not remember it although I may have done it. I know we were over to Judge Chandler's office and Judge Hubbell was with us, but whether at my request or not, I cannot remember.

Q. Up to that time that you had this answer drawn and signed by yourself, will you tell the court whether you had ever said any thing to Judge Hubbell, from which he could reasonably infer that the transaction was a fraudulent one. A. I think he could have inferred that.

Q. What was it that you said from which he could have inferred it?

A. The transaction I speak of, is about the mortgage and the notes.

Q. What did you say to him in relation to that?

A. I said I had given up Kane's notes for the mortgage, and Kane said he did not care if the creditors did get that, because it was not worth any thing. There was nothing else that I remember in that conversation from which he could infer it.

Q. Will you state about what time it was you had taken this mortgage for the notes—you had re-delivered to Kane?

A. I cannot state it exactly. It was a few days previous to the service of the papers on this bill—I think it was April, 1847.

Q. Now, sir, was it not after the filing of this bill in June, 1847?

A. As I remember now, perhaps it was.

Q. Do you remember of enquiring of Judge Hubbell what answer he would have to make to the bill before the master? A. I do not remember.

Q. Do you remember he told you that you would have to tell how you received your pay. A. I do not remember.

Q. Do you remember whether Charles I. Kane was present? A. He was.

Q. Do you not remember that Judge Hubbell told you that you would have to answer what had become of those notes?

A. He may have said so, but I do not recollect it. (After a moment of hesitation.) I think there was something said about that.

Q. Don't you recollect that Judge Hubbell made statements to you, that you would have to show what had become of the notes—how the purchase of goods was paid—how much was paid, &c.; and that one of you said that the notes were given for the mortgage; and that then Judge Hubbell replied, you will have to show where the mortgage is? A. I do not recollect exactly that.

Q. Do you not remember that one of you said to the judge—"suppose the notes had been exchanged for a mortgage, what then?"

A. I do not remember that either of us made that remark.

Q. You cannot swear whether it was, or was not said then?

A. I cannot recollect that it was said.

Q. You cannot swear that it was *not* said?

A. I do not remember that any such thing was said.

Q. The only remaining thing for you to state is, whether you can swear that it was *not* said? A. I think it was not.

Q. According to the best of your recollection, then, you think it was not said? A. Yes, sir.

Q. Well, then, we have got at that at last. Now, was that all, so far as you know, from which Judge Hubbell could infer that the sale was not an honest and fair one? A. Yes, sir.

Q. That was a very short time after the 16th of June, 1847?

A. I think it was.

Q. Now, sir, even after you had had this conversation with Judge Hubbell, in the presence of Kane, when you had spoken of the mortgage transaction, did you not generally claim, every where and above board, before the world, that the transaction was a fair one?

A. I am quite sure I did, up to some time in 1849, until the difficulty arose between me and Kane, which induced me to aid the New York creditors, and file a bill for Howe and others.

Q. Then you persisted in the assertion that that was a fair transaction until after Judge Hubbell went upon the bench? A. Yes, sir.

Q. From the time of the sale of the goods to Kane, of which you have now testified, for the term of about three years, or until some time in 1849, you continually persisted in asserting the fact, that this sale was a fair one. Do you now mean to swear that your assertion, during all that period was false, and that what you now state is true; or, that what you now state is false, and your statement during that period was true?

A. What I stated then was false; and what I state now is true.

Mr. KNOWLTON. Precisely! that is what I wanted to get from you.

Mr. ARNOLD Q. In the suit of Parsons and Lawrence, was it referred to a Master to take the examination as to the property you had, or had by others in trust for you? A. It was.

Q. Were some ten or a dozen interrogatories propounded to you that you declined to answer?

A. My impression is, that I answered as far as I was advised by counsel that I was compelled to answer.

Q. Who was your solicitor?

A. I think I went alone. I went to Judge Hubbell's office previously, but could not find him.

(Mr. Ryan here read the examination before the Master referred to in the testimony.)

Mr. ARNOLD. Mr. Cogswell, after you had had your examination before the Master, which has just been read, did you have an interview with Judge Hubbell as to how far you were compelled to answer?

A. Yes, sir; I did; and he told me. Q. What did you do then?

A. I went away to avoid the master.

Q. Have you now, or since you made your sale, property in your hands; and if so, to what amount?

Mr. RYAN. I would like to ask the pertinency of that question. I have sat peaceably, and not interfered through all this long cross-examination, because I thought I saw your object, but this question does not seem to be material.

Mr. ARNOLD. It is sufficient to answer, perhaps, that the question is asked to show as to the credibility of the witness.

Mr. KNOWLTON. In other words, we want to get at the facts to discredit the witness.

Mr. RYAN. You might ask any other question for that purpose, as well as that about his property.

Mr. ARNOLD. Mr. Cogswell, since that sale to Kane, have you paid the several debts due in New York?

A. No sir; I think I paid some two hundred dollars the day after the sale.

Q. Have you now, in your hands, or subject to your control, property owned by you; and if so, what, and to what amount?

A. I have property under my control, not in my own name, to the amount of some two or three thousand dollars, in lands, town property, &c.

Q. I wish you to fix that sum?

A. It is very difficult to fix any certain value upon it.

Q. What would you take for it—lands lots, and every thing?

A. I would take four thousand dollars for it.

Direct Examination resumed.—Q. In the suit of Howe and others against yourself and Kane, when you were examined did you disclose the property of which Mr. Arnold has just inquired?

A. I did the principal part of it. Some of it I have got under my control since that. I disclosed all that I had at that time under my control.

Q. When you consulted Judge Hubbell in regard to your examination before a master, did you state any thing to Judge Hubbell as reason for declining, or wishing to decline, to swear to that answer.

A. I stated that I could not answer the charges in the bill without committing perjury.

Q. You were asked by Mr. Knowlton, whether, what you publicly gave out for a considerable time, was false, and what you now testify to, is true—now have you ever upon your oath, asserted the validity of that sale.

A. No, sir, I have not.

Q. Was that the reason why you would not swear to such an answer as was put in by the defendant, Kane.

A. Yes, sir. I could not swear to it without committing perjury, and that was the reason why I would not and did not swear to it.

Q. You were asked, I think twice, upon your cross examination, whether you had stated any thing more than you had related to the counsel, to Judge Hubbell, in regard to the character of that sale, before he went upon the bench. Now, I will ask the question, if at any time previous to June, after he went upon the bench, you communicated any thing further to him on that subject.

A. I think I had; I communicated to him, Kane's answer to the Howe bill.

Q. Did you at any time except upon that occasion.

A. I did. I cannot state the precise time nor the conversation; but that I had some three or four conversations, I recollect distinctly.

Q. What was the general purport of your statements to him, and those conversations.

A. It was in relation to Kane's having committed perjury in his answer to that bill.

Q. Do you recollect Charles Crane; at the time of the pendency of the Barns suit, in whose office did he stay.

A. Well, sir, I cannot say. I think he had an office of his own.

Q. When you answered before the master in chancery, had you any advice, and if so, from whom, to substantially refuse to answer the questions?

A. I had advice from Judge Hubbell, and also from Judge Chandler. They both talked about it together and talked to me, about it.

Cross-examination resumed. Q. You say you, on your examination, received advice from both Judge Chandler and Judge Hubbell, to refuse to answer. Had you at that time told Judge Chandler that your sale to Kane was fraudulent? A, I told Judge Chandler that my partners were interested.

Q. You say, since the Howe suit, you had conversation with Judge Hubbell, in which you told him that Kane had committed perjury in his answer to the Howe bill. Now, how happens it you told him then that Kane had committed perjury, while several years before, when he made his answer to the Parsons and Lawrence bill, you did not tell him the same thing?

A. Well, circumstances were different. Besides, there was another reason. At the time the Parsons and Lawrence bill was filed, they had possession of a large amount of property, which I considered ought to go to the benefit of all the creditors, and not to any particular man.

Q. In these conversations with Judge Hubbell, you stated this morning that Judge Hubbell replied to you, that it was fortunate that there was a grand jury in the land—did that remark apply to you or to Kane?

A. Well, I don't know about that. I understood it to apply to Kane and not to myself.

Q. When you spoke to Judge Hubbell about Kane's having committed perjury, did you at the same time tell him that the story which you had been telling these three or four years was all false?

A. I showed him the papers, and he seemed to understand that it was. There was nothing said about the story I had been telling. I did not tell him any thing about any story.

Q. Could you not answer the Parsons & Lawrence bill without committing perjury? A. No, sir.

Q. Yes, but couldn't you. A. Not without disclosing the property.

Mr. Arnold. Oh, ah! that is another thing. But you approved Kane's answer?

A. I do not know that I approved it. I know I insinuated to him that it was not a true one.

Q. Well, you continued to maintain the same state of facts to the public.

A. Yes, sir.

Q. In the Howe suit was there a decree taken against you.

A. I understood there was.

Q. On that decree has there ever been a sale of any property of yours.

A. There has been a sale of property, which was under the control of Mr. Kane.

Q. Exactly! But that is not what I want to get at. Was there any sale of property belonging to you?

A. No, sir; the property which was under my control was deeded to Spencer Stone, in trust for my wife, and was not sold.

Q. They refrained to take that which was held in trust for your wife.

A. Yes, sir.

Q. Now, had you not in fact turned around and broken up the sale, and was it not upon the faith that they would deal gently with you. A. No, sir.

Q. Did you have any conversation with Judge Chandler about that.

A. I have had several conversations with him about it, but he never gave me any idea that he had any power with regard to it.

Q. Well, have not you been assured in some way, that you would in fact be compensated, if that thing was carried through.

A. No, sir, only in so far as they would get their pay out of the property.

Q. Have they ever tried to hunt up and get at your private property, since you turned round to assist these creditors against Kane. A. No, sir.

Mr. KNOWLTON. You stated you had the advice of Judge Chandler to make no disclosures—do you remember that at that time you had answered that Parsons & Lawrence bill, as far as you could, and state the truth.

A. I think I did.

Q. Did you communicate that same fact to Judge Hubbell.

A. I think I did.

Q. And they, thereupon, advised you to refuse answering. A. Yes, sir.

Q. Was that advice to refuse absolutely, or to make it in the form you did.

A. I think, to make it in the form I did—to make no answer at all.

The examination here ended, but witness asked to make an explanation.—In regard to the question Mr. Ryan asked me, whether we had any counsel, or whether Judge Hubbell was our counsel previous to the transfer of these goods, I answered that he was at the time, and we consulted him once or twice, a day or two previous to making the sale. He afterwards asked me, if he was counsel previous to making the sale. I understood that it was previous to the time I had testified of, which took place a day or two before it was consummated. Previous to that time he had not been my counsel.

MATTHEW KEENAN was called, sworn and examined on first, fifth, and sixth specifications of the fourth article.

Witness. I am clerk of the circuit court of Milwaukee county.

Q. Have you the papers in two indictments against Charles I. Kane for perjury? A. I have.

(The papers were read to the court.)

DANIEL H. CHANDLER was called, sworn, and examined upon the same specifications of same article.

Witness. I reside in Milwaukee; my profession is a law practitioner. I am acquainted with Judge Hubbell. The principal part of my acquaintance with him has been since the fall of 1847. I know George Cogswell and Charles I. Kane.

Q. Do you recollect a suit in chancery of Parsons & Lawrence vs. Charles I. Kane and others?

A. I do recollect it. My connection with that suit was drawing the answer of Cogswell to the bill, and, I believe, subscribing it as a solicitor for him. The first I knew of that suit was in the summer of 1847. I was at that time in Wisconsin on a visit; having known Mr. Cogswell before, and Judge Hubbell slightly before, the subject of that suit was conversed upon between Cogswell, Judge Hubbell, and myself. At that time a motion was propounded in that case, the precise object of which I cannot say, but it was in reference to a procedure in some form, which I cannot specifically state; and at the desire of Cogswell, with the concurrence of Judge Hubbell, I was to have assisted at the argument, but it was not then heard. Subsequently to that, when I came to be a resident in this State, which was in the fall of that year, the question did come up, which was intended to have been agitated before, and was dismissed, and the motion, whatever it was, was denied. That was the first intimation I had of the cause. I participated in that motion. I cannot state positively how long before that time I had known Cogswell. He married his wife in the vicinage where I lived. I cannot say that I knew him intimately until after I came to Wisconsin. I think I had not known Kane before I came.

Q. At whose solicitation did you take part in that motion?

A. Judge Hubbell and Cogswell. I conversed about the matter that was pending, with each of them. I believe that Judge Hubbell had some doubt about the success of the proposed motion. I made up a brief at the time, of the grounds on which I thought the motion should have been sustained. I submitted it to him. If the cause had been heard at that time, it was to have been concurrent. I was retained, more perhaps, as a matter of friendship upon my part, in regard to Mr. Cogswell, than from any desire to act on a retainer in that suit. I had been retained before the answer was drawn. Judge Hubbell had spoken to me in reference to the answer of Charles I. Kane and the other persons, and it had been filed prior to the answer of Cogswell. Judge Hubbell desired me to draw the answer for Cogswell, and Cogswell himself was desirous that I should draw it. To my recollection, when he requested me to draw the answer—though I think prior to that, Cogswell had spoken to me on the subject—Judge Hubbell stated to me, that he had drawn the answer for Kane, in which he apprehended perjury had been committed and he was not desirous of drawing the answer for the other defendant, least he might do the same. That is the only reason he gave to me for not drawing it.

Q. You did, then, in fact, draft the answer for Cogswell.

A. I did draft it, though I presume Cogswell copied it. I am satisfied—though I do not remember to have read it since that time—that it was signed by myself as solicitor and by Judge Hubbell as counsel. If the paper is here, I suppose it will show whether I am wrong in that particular.—(The paper was shown to the witness.)—That it is my proper signature and that is Judge Hubbell's.

Q. Was Judge Hubbell at any time present with you and Mr. Cogswell, while that answer was being prepared.

A. I think it was prepared by me without his presence at any time, and I submitted it to him after it was copied.

Q. Were Judge Hubbell, yourself and Cogsville present at any interview before the answer was sworn to?

A. I think we were together. I think we had conversation about this suit, and it was understood that I was to draw the answer.

Q. When they were present, was there any thing stated as to how much of the bill should be answered?

A. I think not, sir. I think I may say, it was a trick of the trade—an answer without much substantiality about it.

Mr. RYAN. It certainly was a very successful trick.

Witness. I would not have it understood that it was the best specimen of my chancery pleadings.

Q. Who acted in that suit as the counsel of Kane?

A. Judge Hubell, I suppose. I supposed he was retained for both of them. I so understood it in the conversations we had, but the drawing of this answer was referred to me at Cogswell's request.

Q. Did any one else act as solicitor except you and Judge Hubbell?

A. If so, it was unknown to me. I was not of counsel for Kane any farther than that motion would probably have effected both of them in regard to the matter. I never had any communication with him in regard to a solicitorship. I had no retainer from him at all.

Q. Had you any instructions as counsel—I don't ask who or what—which induced you to draw the answer of Cogswell covering so little of the bill.

A. None, sir, except what my own genius devised.

Q. Had you any statement of facts made to you upon which you deemed necessary to answer so little of the bill?

A. From Cogswell I had. That was the resort had for taking the chances of passing exceptions, and be efficient as an answer; served the purpose of its design.

Q. Were you present when that cause was sent from the circuit court of Milwaukee county to the circuit court of Walworth county. A. I was, sir.

Q. Had you and Judge Hubbell remained as counsel in defence of that suit, up to the time that Judge Hubbell went upon the bench?

A. I cannot say, sir. Neither of us had been discharged. I was not, and I had no knowledge that he had been.

Q. What took place at the time the suit was removed to Walworth county, and what was said in Court?

A. At that time the other suit of Howe and others against Kane and others, had been filed at the opening of Court; both causes were sent away—one to Washington county, and the other to Walworth county. I can only state this—I moved to have this case sent away, upon the hypothesis that Judge Hubbell was solicitor for one and counsellor for the other; and both of them were sent away, respectively on the same day, as I think. Whether the motion was made by Mr. James, distinctively to have it done, I don't know, but it was done simultaneously with its being done in the case of Howe, and upon motion, as I think.

Q. What reason was assigned in open Court for it?

A. Why, the reason assigned in the Howe case, by the judge was, that he had been of counsel for Kane in a prior suit which embraced the same elements that the bill did in this. I won't undertake to speak with confidence, what he said in the other case, but the same reason, I think, was assigned in that case also.

Q. Do you recollect, in the Parsons & Lawrence suit, any thing in the examination of Cogswell as judgment debtor before a master of chancery?

A. Yes; Judge Hubbell and I had a conversation about that. I was not present. I declined to go. The facts I remember in that case were, that Cogswell was in rather a close place—he was subject to attachment, or at least I so understood it. He was cited to be examined before a commissioner or officer, in reference to property, with a view to acquiring some lien upon him. Judge Hubbell and I conversed about it. I advised him not to go before the commissioner. I thought there was a better way of getting along with it. There was an examination, however, which I understood resulted adversely. I understood that Cogswell declined answering any more interrogatories, for the reason that they could not be answered then without making bad disclosures. An order was made by Judge Miller, requiring Cogswell to answer by a certain time, which gave him time to appear before the same officer, to make answer to these interrogatories. I do not know any thing of it of my own knowledge, nor except from Cogswell.

Q. Did you, prior to the examination, give any advice to Cogswell about this?

A. I think we were all together, on one occasion, when Judge Hubbell was in favor of going before the officer, and that it might be so managed as to have an avoidance of matters which would expose him as to property. So far as I was concerned I advised him not to go before the officer. I advised him to go away

before the expiration of the order which Judge Miller had made. I believe he did go.

Q. Have you ever heard of the suit in chancery of Howe and others, against Kane & Cogswell?

A. I should think I had. I was solicitor in that case. It was several times in Supreme Court on appeal. It was argued in the Supreme Court, in the first instance, in the June term of 1850, I should think.

Q. Did Judge Hubbell at that time sit in the cause?

A. No, sir.

Q. Did he leave the bench when the cause came on for argument?

A. He did. I heard him say that his concernment in a cause, embracing the same matters, would preclude him from sitting upon the bench in its adjudication.

Q. Did Judge Hubbell, at subsequent terms of the Supreme Court, decline sitting upon that cause?

A. In several of them—in all but two I think, and in reference to the last, I do not know.

Q. When did he sit first?

A. I think it was in 1852, while he was Chief Justice. It was at the time when you, Mr. Ryan, were associated with Mr. Brown, when a question arose in which he, Brown, undertook to induce the Court to make a certain ruling, that perhaps you remember. I cannot state precisely in regard to that proposition. I was sick at the time, and could not pay much attention to it. I suggested to them that it would not be any inconvenience to you, (Mr. Ryan) to have that passed, and two Judges undertook to have that cause put over, on account of my ill health; but the Sheriff came for me at my lodgings, saying that the cause was then on. I came here and the papers were then being read, and Judge Hubbell was upon the bench. At that time nothing was said about his being upon the bench—at least I heard nothing. I never heard him assign any reason for sitting at that time, although I had heard him assign a reason for not sitting in a prior hearing of the same cause—at a time prior to this one, to which I last referred in that cause, you, Mr. Ryan, were anxious about the case, the Judge was about leaving the bench, and you made some remarks regarding his remaining upon the bench. I merely said this, that the Judge had on every occasion previous to this, declined sitting, and he then said he thought he had better leave the bench, and did so; that was prior to the time when he did sit in one of the matters depending in that case. When I came into Court the Judge was sitting upon the bench, and the papers were being read. I remained till the argument was closed. He presided upon the bench until it was closed, and participated in relating the contents of your brief, which contained what I thought was offensive to the dignity of the Court. After the argument last referred to, the Court directed one point in the case to be re-argued at a subsequent term. I think it was a continuance of the argument of the very motion in which you and Mr. Brown were concerned upon one branch of the case. There was no counsel here for the defendant. Kane and I made the arrangement with Judge Whiton, who was then Chief Justice, that I should make a written brief and argument and leave it with him, for the counsel who might come to argue it ex-parte—that was the last time it was before the Court. As to Judge Hubbell participating in that, I know nothing, as I was not here at the time.

Cross Examination.—Q. You did not distinctly state by whom you were retained in the suit of Parsons and Lawrence?

A. I was retained by Mr. Cogswell.

Q. From that time to the present, have you continued to act as counsel for him in all particulars through all his business.

A. Yes, I have. I have done no precise law business for him, except in counseling him in such matters. I do not know that I have brought a suit.

Q. Previous to the drawing of that answer, did you with Cogswell have an interview with Judge Hubbell.

A. Yes, sir. I said just now, that according to my recollection, he had drawn the answer for Kane, and he feared that Kane had committed perjury; and he did not want to draw two answers, least both might be of the same character. That was the idea he expressed to me.

Q. Can you recollect the precise words of Judge Hubbell.

A. I cannot command distinctness of recollection enough to remember the precise language used. In substance it was as I have stated.

Q. Can you in any of these interviews undertake to give the precise language.

A. Well, I should be assuming to great distinctness of recollection, if I should say I could.

Q. From whom did you understand that Judge Hubbell had been retained to act for Kane and Cogswell both.

A. When I was here on a visit, the matter was in his hands, and at the instance of Cogswell, I conversed with Judge Hubbell about it, and he was doubtful as to the effect of a motion which I think I propounded; and I think it was talked about between us three. At all events I, made a brief in the matter, and it was subsequently argued by myself and him.

Q. And the interests in that suit were identical, were they.

A. No, not identical. The bill was filed against Cogswell as debtor.

Q. Precisely, but they were friends and partners.

A. If they were partners, why then of course it was joint interest to them.

Q. Can you be positive that Judge Hubbell told you that he was retained for Kane as well as Cogswell.

A. My impression is, that he was the counsel also for Kane.

Q. Was it not in the first place, the request of Cogswell for you to draw the answer; and did you not go to Judge Hubbell to get his consent.

A. Cogswell had spoken to me about drawing the answer, before my speaking to the Judge about it. My idea was that he was acting for both Cogswell and Kane. I do not know that he said he was not the solicitor for Cogswell. Judge Hubbell spoke to me during my visit to draw the answer. I do not know whether Cogswell had seen Judge Hubbell in the mean time.

Q. Now as to the language made use of in those two suits, when the Howe suit and the other were removed—can you give the precise language of the Judge.

A. No, I cannot. The cause in which I was interested, was sent away on my motion, upon the hypothesis of the Judge having been concerned as the counsel of Kane in the other suit, which was likely to forbid.

Q. Are you positive whether there was a motion made or not, at the direction of the Judge himself.

A. I am very confident I was there for the purpose of moving and sending away the case.

Mr. RYAN. I can say positively there was no motion for sending it away.

Witness. Then you are mistaken about it.

Mr. RYAN. No, I am not mistaken, I know there was something said about sending it to Racine county; but there was no motion made.

Witness. I think I went there on purpose to have that cause sent away. I felt it my duty to have it in process of being acted on by some court that would forward it. I know I made a motion, whether it is on record or not.

Q. You were solicitor in the case of Howe against Kane. A. Yes, sir.

Q. Who employed you to draft that bill.

A. A power of attorney was sent me, over the signature of a part of those who were complainants in that bill, with a reference to others, who for some reason had not joined in the letter. The letter was written, I think by Mr. Howe himself or by his Attorney, and signed by him.

Q. Who instigated the filing of that bill.

A. There was a man from New York who had spoken to me about it before receiving that letter. I told him I would not do it; but subsequently to receiving the letter, I concluded to undertake it. Cogswell furnished the material facts upon which I constructed it. I relied mainly upon the facts I derived from him. I might have derived some few facts from others.

Q. Has not Cogswell been the main man in carrying on that contest.

A. I know of nothing except the information he has given that would make him the main man. I drew the bill as desired by Mr. Butler, Prosecuting Attorney of Milwaukee county. I was not desirous at all about it. He (Butler) could have done it, but for some reasons he wanted me to do it. He was the son of an old friend of mine. I suppose it come up in this wise—On filing the first bill he desired me to draw it. He told me it was near the terminus of the Court, and he wanted me to do it. I suppose Mr. Ryan drew the demurrers. I never had any thing to do with these indictments subsequent to handing them over to Mr. Butler. I would not be concerned in it.

Q. Do you know the fact of Mr. Butler, the District Attorney, being in court.

A I do not. I was not there at the time when the demurrers were argued. Mr. Butler spoke to me about the Howe bill, and wanted me to argue it. I told him I would have nothing to do with it; I knew nothing of what was done ultimately by the Judge until after it had transpired.

Q. Do you know the fact, that while these demurrers were pending, the argument was put off from time to time, with reference to your convenience?

A. I told Mr. Butler, that for his convenience I would draw the indictment upon which that cause was based; and, perhaps, I did say I would argue it under so clear an authority as that reported. He said he would put it off for my convenience.

Q. Do you know it was put off to await your return.

A. It may have been so. I suppose Butler did not wish to argue it. If his decision was right, it would be right to argue the demurrer in that instance.

Mr. KNOWLTON. What was the subject matter, and what were the questions pending in the Supreme Court when Judge Hubbell first took part in the deliberations in that case. A. It was an appeal from some decision.

Mr. RYAN. I can tell you that, Mr. Knowlton, if you wish to know. At a previous term of the Washington county Circuit Court, Mr. Brown and myself obtained a decretal order for dismissing the bill of Howe and others. Subsequently at that same term, Judge Chandler procured an order, without notice to us, affecting that previous order. Still subsequently, and at the same term, the final decree was made as to George Cogswell. When we learned of that, we took an appeal from that decision. The Supreme Court reversed the order, on the ground that no notice had been served upon us. At a subsequent term, Judge Chandler made a motion upon notice. We did not appear. Judge Larrabee then made the second order reinstating the cause as to Kane: from this order the last appeal was taken. That was the appeal on which I understood Judge Hubbell to have sat. Judge Hubbell always declined to sit in the cause while the cause was pending against Cogswell; but when it was pending against Kane, and terminated against Cogswell, then he sat.

WITNESS. That is the history of the case I believe. That is the subject matter as it came before the Court at that time.

Mr. RYAN. That last appeal was in this Court two terms. It was here first in December 1851; Brown and myself argued it. The Court did not decide it at that time. Before the next term, Mr. Brown received a letter from Judge Whiton, announcing that the appeal was to be re-argued on one point at the June term 1852, and he came, but I did not.

A Member of the Court asked—The witness stated that he sat in the argument; did he take part in the decision.

(Judge Hubbell admitted that he did, after the termination of Cogswell's interest in it.)

By another member of the Court. Have you any other knowledge that Judge Hubbell had been retained as counsel or solicitor for Kane, except that of drawing the answer of Charles I. Kane.

A. I know nothing otherwise of his professional employment for Kane; I have no personal knowledge otherwise.

Direct Examination resumed.—Q. Are you not mistaken in supposing that the two cases Parsons & Lawrence and the Howe cause, were removed at the same time. A. Such was my idea.

Mr. RYAN. It could not have been the case.

WITNESS. I supposed it was at the same time.

Mr. RYAN. The records say that the Howe case was not filed till the fall of 1849.

WITNESS. Then I am mistaken in regard to their being simultaneously sent away. I had supposed, however, they were both done at the same time.

Cross Examination resumed.—Mr. KNOWLTON. Did you feel equally confident of the removal of both these cases at once as to the language used by Judge Hubbell.

A. No; for the reason that I am not certain now that I was there when they were sent away. I am not as confident of that fact as I am that I detailed the conversation between us correctly.

Court adjourned to next day.

TENTH DAY.

FRIDAY, June 17.

MORNING SESSION.

ASHAL FINCH, jr., was called, and examined, on the first, fifth, and sixth specifications of article four.

Q. Are you acquainted with the suit of Calvin W. Howe and others against George Cogswell and Charles I. Kane. A. I know something about it.

Q. Did you, about the same time that the bill in that case was filed, file a bill against the same parties.

A. I did. I filed in Milwaukee county circuit court. I applied to Judge Hubbell for an injunction on that bill.

Q. At the time of that application, was any thing said by Judge Hubbell touching his relations to the suit, or the subject matter of it.

A. Well, there was some considerable conversation passed between Judge Hubbell and myself in relation to some portion of the subject matter, stating my case and reading the bill for the purpose of grounding my application for the injunction, or all that part of it which was necessary for procuring the injunction.

Q. Was any thing said by Judge Hubbell in regard to his relations in that suit or those parties.

A. I recollect of his stating that he had drawn an answer for Kane. I had charged fraud in the bill—collusion between Kane and Cogswell. He spoke of having drawn the answer, and of having been conversant with some of the facts in the answer to the bill, or rather to the fraud generally alleged. I think he stated that he drew the answer of Kane.

Q. Did he say any thing in relation to that cause remaining or not remaining in the circuit court of Milwaukee county.

A. I cannot say he did at that time.—He did when the case was sent away. According to my recollection, he stated that he had been of counsel in a case involving the subject matter of that bill, and could not hear it, and it was accordingly sent away to Washington county.

Cross Examination.—Q. In that conversation, did he state that he had been counsel for Cogswell?

A. I do not recollect of his stating his being counsel for Cogswell. He stated that he had drawn the answer for Kane.

Q. Did he insist upon sending it away as a matter of right, or a feeling of delicacy?

A. I was exceedingly anxious to have the case retained there, but he insisted upon sending it away, and the only ground upon which he sent it, as I understood it, was that he was or had been of counsel in that case.

HARLOW S. ORTON was called, sworn and examined on the same specifications.

Witness. My profession is attorney at law. I knew of a suit of Calvin W. Howe and others, against Cogswell & Kane. I was retained in that suit by Judge Chandler, at the June term of the Supreme Court for 1850. I was retained by him for the complainants as assistant counsel, and argued one or two appeals in the Supreme Court. I was here at the June term, 1850, when the cause was first in the Supreme Court and assisted in the argument.

Q. Did Judge Hubbell sit upon the bench of the Supreme Court, at the hearing of the case? A. He did not.

Q. Was the appeal in that case the appeal of Kane alone?

Mr. Arnold. Will not the records show that?

Mr. Ryan. I should like to prove that all the appeals taken in that cause, were taken by Kane alone. I suppose the records will prove it when they come.

A. The appeal was the appeal of Kane alone.

Q. Did Judge Hubbell take part in the hearing and decision of that case, at that term.

A. He did not. I think I have been present at every term since then, and these appeals were taken by Kane alone. I was present at the December term, 1851, when the cause was last appealed.

Q. Did Judge Hubbell then sit in the hearing of the cause.

A. I think he did. When the cause was here in 1852, I was in court; I do not remember whether it was argued in open court at that term; I think it was decided at that term.

Q. Have you ever heard Judge Hubbell assign any reason for not sitting in that case when he did not sit.

A. I have. At the June term I was employed by Judge Chandler, in the case, and was called on to take part in the argument, and had not previously, any intimate knowledge of the case; and I noticed that Judge Hubbell did not take his seat upon the bench. The cause was on argument two days. I met Judge Hubbell in the public square, and mentioned the fact that he did not occupy the bench—perhaps asked him why; and at that time he informed me, that he did not sit because he had been formerly, counsel in the matter. That was about all the conversation I had with him at that time, upon that subject. I believe I did, however, then mention some points I intended to make in the argument, knowing that he was not going to sit.

Cross Examination.—A. I think that was about the import of what he said—that he had been counsel before, on similar subject matter. I do not think the names of either of the defendants were mentioned.

Q. Do you remember that upon some of these bills in that case in the Supreme Court, Mr. Brown or Mr. Ryan, insisted upon Judge Hubbell's sitting in the cause, when he was about to withdraw.

A. I cannot remember that he did offer to withdraw. In fact, when he did sit, I thought nothing of it. It did not occur to me that there was any impropriety in his sitting; and I do not recollect of either Mr. Ryan or Mr. Brown's insisting upon his sitting in the case. It never had been made a question by me, whether it had by others or not, I do not know.

Mr Albert Smith was examined upon the third specification of Article 4.

Mr. Ryan read an order of the Court signed by Levi Hubbell, in reference to the divorce of William L. Hart, and asked the witness—

Q. Were you counsel for the petitioner and plaintiff in the divorce suit of which I have just read the record. A. I was.

Q. How came you to be retained in that suit.

A. In or about the month of October, I think, Judge Hubbell met me, and desired me to call at his office, as he had some matters of business which he desired me to attend to. A short time after that I called, and Judge Hubbell then told me he had a case of Hart against his wife for divorce, and desired I

Q. You say, since the Howe suit, you had conversation with Judge Hubbell, in which you told him that Kane had committed perjury in his answer to the Howe bill. Now, how happens it you told him then that Kane had committed perjury, while several years before, when he made his answer to the Parsons and Lawrence bill, you did not tell him the same thing?

A. Well, circumstances were different. Besides, there was another reason. At the time the Parsons and Lawrence bill was filed, they had possession of a large amount of property, which I considered ought to go to the benefit of all the creditors, and not to any particular man.

Q. In these conversations with Judge Hubbell, you stated this morning that Judge Hubbell replied to you, that it was fortunate that there was a grand jury in the land—did that remark apply to you or to Kane?

A. Well, I don't know about that. I understood it to apply to Kane and not to myself.

Q. When you spoke to Judge Hubbell about Kane's having committed perjury, did you at the same time tell him that the story which you had been telling these three or four years was all false?

A. I showed him the papers, and he seemed to understand that it was. There was nothing said about the story I had been telling. I did not tell him any thing about any story.

Q. Could you not answer the Parsons & Lawrence bill without committing perjury? A. No, sir.

Q. Yes, but couldn't you. A. Not without disclosing the property.

Mr. Arnold. Oh, ah! that is another thing. But you approved Kane's answer?

A. I do not know that I approved it. I know I insinuated to him that it was not a true one.

Q. Well, you continued to maintain the same state of facts to the public.

A. Yes, sir.

Q. In the Howe suit was there a decree taken against you.

A. I understood there was.

Q. On that decree has there ever been a sale of any property of yours.

A. There has been a sale of property, which was under the control of Mr. Kane.

Q. Exactly! But that is not what I want to get at. Was there any sale of property belonging to you?

A. No, sir; the property which was under my control was deeded to Spencer Stone, in trust for my wife, and was not sold.

Q. They refrained to take that which was held in trust for your wife.

A. Yes, sir.

Q. Now, had you not in fact turned around and broken up the sale, and was it not upon the faith that they would deal gently with you. A. No, sir.

Q. Did you have any conversation with Judge Chandler about that.

A. I have had several conversations with him about it, but he never gave me any idea that he had any power with regard to it.

Q. Well, have not you been assured in some way, that you would in fact be compensated, if that thing was carried through.

A. No, sir, only in so far as they would get their pay out of the property.

Q. Have they ever tried to hunt up and get at your private property, since you turned round to assist these creditors against Kane. A. No, sir.

Mr. KNOWLTON. You stated you had the advice of Judge Chandler to make no disclosures—do you remember that at that time you had answered that Parsons & Lawrence bill, as far as you could, and state the truth.

A. I think I did.

Q. Did you communicate that same fact to Judge Hubbell.

A. I think I did.

Q. And they, thereupon, advised you to refuse answering. A. Yes, sir.

Q. Was that advice to refuse absolutely, or to make it in the form you did.

A. I think, to make it in the form I did—to make no answer at all.

The examination here ended, but witness asked to make an explanation.—In regard to the question Mr. Ryan asked me, whether we had any counsel, or whether Judge Hubbell was our counsel previous to the transfer of these goods, I answered that he was at the time, and we consulted him once or twice, a day or two previous to making the sale. He afterwards asked me, if he was counsel previous to making the sale. I understood that it was previous to the time I had testified of, which took place a day or two before it was consummated. Previous to that time he had not been my counsel.

MATTHEW KEENAN was called, sworn and examined on first, fifth, and sixth specifications of the fourth article.

Witness. I am clerk of the circuit court of Milwaukee county.

Q. Have you the papers in two indictments against Charles I. Kane for perjury? A. I have.

(The papers were read to the court.)

DANIEL H. CHANDLER was called, sworn, and examined upon the same specifications of same article.

Witness. I reside in Milwaukee; my profession is a law practitioner. I am acquainted with Judge Hubbell. The principal part of my acquaintance with him has been since the fall of 1847. I know George Cogswell and Charles I. Kane.

Q. Do you recollect a suit in chancery of Parsons & Lawrence vs. Charles I. Kane and others?

A. I do recollect it. My connection with that suit was drawing the answer of Cogswell to the bill, and, I believe, subscribing it as a solicitor for him. The first I knew of that suit was in the summer of 1847. I was at that time in Wisconsin on a visit; having known Mr. Cogswell before, and Judge Hubbell slightly before, the subject of that suit was conversed upon between Cogswell, Judge Hubbell, and myself. At that time a motion was propounded in that case, the precise object of which I cannot say, but it was in reference to a procedure in some form, which I cannot specifically state; and at the desire of Cogswell, with the concurrence of Judge Hubbell, I was to have assisted at the argument, but it was not then heard. Subsequently to that, when I came to be a resident in this State, which was in the fall of that year, the question did come up, which was intended to have been agitated before, and was dismissed, and the motion, whatever it was, was denied. That was the first intimation I had of the cause. I participated in that motion. I cannot state positively how long before that time I had known Cogswell. He married his wife in the vicinage where I lived. I cannot say that I knew him intimately until after I came to Wisconsin. I think I had not known Kane before I came.

Q. At whose solicitation did you take part in that motion?

A. Judge Hubbell and Cogswell. I conversed about the matter that was pending, with each of them. I believe that Judge Hubbell had some doubt about the success of the proposed motion. I made up a brief at the time, of the grounds on which I thought the motion should have been sustained. I submitted it to him. If the cause had been heard at that time, it was to have been concurrent. I was retained, more perhaps, as a matter of friendship upon my part, in regard to Mr. Cogswell, than from any desire to act on a retainer in that suit. I had been retained before the answer was drawn. Judge Hubbell had spoken to me in reference to the answer of Charles I. Kane and the other persons, and it had been filed prior to the answer of Cogswell. Judge Hubbell desired me to draw the answer for Cogswell, and Cogswell himself was desirous that I should draw it. To my recollection, when he requested me to draw the answer—though I think prior to that, Cogswell had spoken to me on the subject—Judge Hubbell stated to me, that he had drawn the answer for Kane, in which he apprehended perjury had been committed and he was not desirous of drawing the answer for the other defendant, least he might do the same. That is the only reason he gave to me for not drawing it.

Q. You did, then, in fact, draft the answer for Cogswell.

A. I did draft it, though I presume Cogswell copied it. I am satisfied—though I do not remember to have read it since that time—that it was signed by myself as solicitor and by Judge Hubbell as counsel. If the paper is here, I suppose it will show whether I am wrong in that particular.—(The paper was shown to the witness.)—That it is my proper signature and that is Judge Hubbell's.

Q. Was Judge Hubbell at any time present with you and Mr. Cogswell, while that answer was being prepared.

A. I think it was prepared by me without his presence at any time, and I submitted it to him after it was copied.

Q. Were Judge Hubbell, yourself and Cogsville present at any interview before the answer was sworn to?

A. I think we were together. I think we had conversation about this suit, and it was understood that I was to draw the answer.

Q. When they were present, was there any thing stated as to how much of the bill should be answered?

A. I think not, sir. I think I may say, it was a trick of the trade—an answer without much substantiality about it.

Mr. RYAN. It certainly was a very successful trick.

Witness. I would not have it understood that it was the best specimen of my chancery pleadings.

Q. Who acted in that suit as the counsel of Kane?

A. Judge Hubell, I suppose. I supposed he was retained for both of them. I so understood it in the conversations we had, but the drawing of this answer was referred to me at Cogswell's request.

Q. Did any one else act as solicitor except you and Judge Hubbell?

A. If so, it was unknown to me. I was not of counsel for Kane any farther than that motion would probably have effected both of them in regard to the matter. I never had any communication with him in regard to a solicitorship. I had no retainer from him at all.

Q. Had you any instructions as counsel—I don't ask who or what—which induced you to draw the answer of Cogswell covering so little of the bill.

A. None, sir, except what my own genius devised.

Q. Had you any statement of facts made to you upon which you deemed necessary to answer so little of the bill?

A. From Cogswell I had. That was the resort had for taking the chances of passing exceptions, and be efficient as an answer; served the purpose of its design.

Q. Were you present when that cause was sent from the circuit court of Milwaukee county to the circuit court of Walworth county. A. I was, sir.

Q. Had you and Judge Hubbell remained as counsel in defence of that suit, up to the time that Judge Hubbell went upon the bench?

A. I cannot say, sir. Neither of us had been discharged. I was not, and I had no knowledge that he had been.

Q. What took place at the time the suit was removed to Walworth county, and what was said in Court?

A. At that time the other suit of Howe and others against Kane and others, had been filed at the opening of Court; both causes were sent away—one to Washington county, and the other to Walworth county. I can only state this—I moved to have this case sent away, upon the hypothesis that Judge Hubbell was solicitor for one and counsellor for the other; and both of them were sent away, respectively on the same day, as I think. Whether the motion was made by Mr. James, distinctively to have it done, I don't know, but it was done simultaneously with its being done in the case of Howe, and upon motion, as I think.

Q. What reason was assigned in open Court for it?

A. Why, the reason assigned in the Howe case, by the judge was, that he had been of counsel for Kane in a prior suit which embraced the same elements that the bill did in this. I won't undertake to speak with confidence, what he said in the other case, but the same reason, I think, was assigned in that case also.

Q. Do you recollect, in the Parsons & Lawrence suit, any thing in the examination of Cogswell as judgment debtor before a master of chancery?

A. Yes; Judge Hubbell and I had a conversation about that. I was not present. I declined to go. The facts I remember in that case were, that Cogswell was in rather a close place—he was subject to attachment, or at least I so understood it. He was cited to be examined before a commissioner or officer, in reference to property, with a view to acquiring some lien upon him. Judge Hubbell and I conversed about it. I advised him not to go before the commissioner. I thought there was a better way of getting along with it. There was an examination, however, which I understood resulted adversely. I understood that Cogswell declined answering any more interrogatories, for the reason that they could not be answered then without making bad disclosures. An order was made by Judge Miller, requiring Cogswell to answer by a certain time, which gave him time to appear before the same officer, to make answer to these interrogatories. I do not know any thing of it of my own knowledge, nor except from Cogswell.

Q. Did you, prior to the examination, give any advice to Cogswell about this?

A. I think we were all together, on one occasion, when Judge Hubbell was in favor of going before the officer, and that it might be so managed as to have an avoidance of matters which would expose him as to property. So far as I was concerned I advised him not to go before the officer. I advised him to go away

before the expiration of the order which Judge Miller had made. I believe he did go.

Q. Have you ever heard of the suit in chancery of Howe and others, against Kane & Cogswell?

A. I should think I had. I was solicitor in that case. It was several times in Supreme Court on appeal. It was argued in the Supreme Court, in the first instance, in the June term of 1850, I should think.

Q. Did Judge Hubbell at that time sit in the cause?

A. No, sir.

Q. Did he leave the bench when the cause came on for argument?

A. He did. I heard him say that his concernment in a cause, embracing the same matters, would preclude him from sitting upon the bench in its adjudication.

Q. Did Judge Hubbell, at subsequent terms of the Supreme Court, decline sitting upon that cause?

A. In several of them—in all but two I think, and in reference to the last, I do not know.

Q. When did he sit first?

A. I think it was in 1852, while he was Chief Justice. It was at the time when you, Mr. Ryan, were associated with Mr. Brown, when a question arose in which he, Brown, undertook to induce the Court to make a certain ruling, that perhaps you remember. I cannot state precisely in regard to that proposition. I was sick at the time, and could not pay much attention to it. I suggested to them that it would not be any inconvenience to you, (Mr. Ryan) to have that passed, and two Judges undertook to have that cause put over, on account of my ill health; but the Sheriff came for me at my lodgings, saying that the cause was then on. I came here and the papers were then being read, and Judge Hubbell was upon the bench. At that time nothing was said about his being upon the bench—at least I heard nothing. I never heard him assign any reason for sitting at that time, although I had heard him assign a reason for not sitting in a prior hearing of the same cause—at a time prior to this one, to which I last referred in that cause, you, Mr. Ryan, were anxious about the case, the Judge was about leaving the bench, and you made some remarks regarding his remaining upon the bench. I merely said this, that the Judge had on every occasion previous to this, declined sitting, and he then said he thought he had better leave the bench, and did so; that was prior to the time when he did sit in one of the matters depending in that case. When I came into Court the Judge was sitting upon the bench, and the papers were being read. I remained till the argument was closed. He presided upon the bench until it was closed, and participated in relating the contents of your brief, which contained what I thought was offensive to the dignity of the Court. After the argument last referred to, the Court directed one point in the case to be re-argued at a subsequent term. I think it was a continuance of the argument of the very motion in which you and Mr. Brown were concerned upon one branch of the case. There was no counsel here for the defendant. Kane and I made the arrangement with Judge Whiton, who was then Chief Justice, that I should make a written brief and argument and leave it with him, for the counsel who might come to argue it ex-parte—that was the last time it was before the Court. As to Judge Hubbell participating in that, I know nothing, as I was not here at the time.

Cross Examination.—Q. You did not distinctly state by whom you were retained in the suit of Parsons and Lawrence?

A. I was retained by Mr. Cogswell.

Q. From that time to the present, have you continued to act as counsel for him in all particulars through all his business.

A. Yes, I have. I have done no precise law business for him, except in counseling him in such matters. I do not know that I have brought a suit.

Q. Previous to the drawing of that answer, did you with Cogswell have an interview with Judge Hubbell.

A. Yes, sir. I said just now, that according to my recollection, he had drawn the answer for Kane, and he feared that Kane had committed perjury; and he did not want to draw two answers, least both might be of the same character. That was the idea he expressed to me.

Q. Can you recollect the precise words of Judge Hubbell.

A. I cannot command distinctness of recollection enough to remember the precise language used. In substance it was as I have stated.

Q. Can you in any of these interviews undertake to give the precise language.

A. Well, I should be assuming to great distinctness of recollection, if I should say I could.

Q. From whom did you understand that Judge Hubbell had been retained to act for Kane and Cogswell both.

A. When I was here on a visit, the matter was in his hands, and at the instance of Cogswell, I conversed with Judge Hubbell about it, and he was doubtful as to the effect of a motion which I think I propounded; and I think it was talked about between us three. At all events I made a brief in the matter, and it was subsequently argued by myself and him.

Q. And the interests in that suit were identical, were they.

A. No, not identical. The bill was filed against Cogswell as debtor.

Q. Precisely, but they were friends and partners.

A. If they were partners, why then of course it was joint interest to them.

Q. Can you be positive that Judge Hubbell told you that he was retained for Kane as well as Cogswell.

A. My impression is, that he was the counsel also for Kane.

Q. Was it not in the first place, the request of Cogswell for you to draw the answer; and did you not go to Judge Hubbell to get his consent.

A. Cogswell had spoken to me about drawing the answer, before my speaking to the Judge about it. My idea was that he was acting for both Cogswell and Kane. I do not know that he said he was not the solicitor for Cogswell. Judge Hubbell spoke to me during my visit to draw the answer. I do not know whether Cogswell had seen Judge Hubbell in the mean time.

Q. Now as to the language made use of in those two suits, when the Howe suit and the other were removed—can you give the precise language of the Judge.

A. No, I cannot. The cause in which I was interested, was sent away on my motion, upon the hypothesis of the Judge having been concerned as the counsel of Kane in the other suit, which was likely to forbid.

Q. Are you positive whether there was a motion made or not, at the direction of the Judge himself.

A. When we started to go up to Mr. Cross's office, he remarked that he supposed there was no impropriety in his being a witness. I said I supposed he was judge of that. That was all, on that point.

Q. When did you become acquainted with Judge Hubbell.

A. I knew him personally before I saw him in Milwaukee in 1847. I have an impression that I saw him in Albany, N. Y.; but I am not certain about that. My acquaintance with him has been greater since he has been upon the bench than before.

Q. Will you state about what time that change you speak of took place in your feelings towards Judge Hubbell.

A. It is impossible, Mr. Ryan, I might as well attempt to state when a plant begins to grow. I may say, however, that it was certainly before the Elmore interview, and since he went upon the bench.

Q. Was your feeling against him as a man or a Judge.. A. As a judge.

Cross Examination resumed.—Q. Did that interview of which you have spoken, personally so offend you that you did not speak to him afterwards.

A. No, sir. It did not offend me.

Q Have you had a suit of your own in his court. A. I have.

Q. In that suit the decisions have been adverse to you, have they not.

A. No, sir. The decisions of Judge Hubbell have been adverse.

Q. Has that been the subject of all the rancor in your breast.

A. It is possible—I cannot say certain.

Mr. LUM was called to produce the papers in the case of Levi B. Vilas and Ezra L. Varney against R. J. Lansing and others, mentioned in the second specification of the fifth article. These papers were read to the Court In those papers an entry was made that the defendant, on the 24th day of April, 1852, into Court two hundred and sixteen dollars and ninety-six cents—with the note paid in pencil, "Judge Hubbell has money;" also the following receipt: "December 21st, 1852, received of the Judge two hundred and fifteen dollars, and of the clerk one dollar and thirty-two cents, money paid in cash."

Mr. ARNOLD. If your only object be that which is set forth in the specification, I don't care to have the record read.

Mr. RYAN. I wish it should be read. I think you will hereafter see the propriety of having it read. I would not waste the time of the Court if I did not think it proper to be read. That bill was filed on the 20th December, 1851, according to the book. There was an amended bill filed December 8th, 1851, making the Corwiths parties. It sets out the original bill and an endorsement of a note to Corwith & Co., new defendants. I have seen the entries, and do not think an answer was put into the bill at all.

The reading of the papers was then had.

Mr. BURDICK was called, sworn and examined upon the same specification.

Witness. I was clerk of the Circuit Court of Dane county, in 1851 and 1852. I recollect that there was such a suit pending in the Court, as you have read the papers of.

Q. Do you recollect the circumstances of the order, giving leave to the complainants to pay the money into Court?

A. I have an indistinct recollection of it.

Q. In whose hand-writing are these entries of the 23rd and 24th of April, 1852?

A. In mine. Judge Vilas paid me on the 24th of April, two hundred and fifteen dollars, and perhaps some few cents—two hundred and sixteen dollars and ninety six cents is the amount entered, as that was due on the note, and the amount intended to be paid—but Judge Vilas did not have money enough with him, or there was some difficulty in making the change, and I entered the whole amount as having been paid, accounting myself for the balance.

Q. How long did you retain that money?

A. It remained in my hands about an hour.

Q. How came it to leave your hands; and into whose hands did it pass?

A. At the time the motion was under consideration, some conversation was had in Court about the payment of the money into Court, to stop interest on the note. It was remarked that interest might be allowed upon money paid into Court. After the paying in of the money, the Judge asked if I was willing to pay interest upon it. I replied that I was not willing, because I could not make use of money paid in in that way. He remarked that he could pay interest upon it, and would take it if I had no objection. I had none, and paid him the money for which he gave me a receipt. I have not that receipt now; I think I gave it to Mr. Collins. I think that money never returned to my hands, though I cannot state distinctly about that.

Q. Do you recollect of paying or accounting to Mr. Collins, for the small sum of one dollar and some cents as the balance of that money?

A. I have not a distinct recollection of doing it, but that I did so I am satisfied, because that entry is in my hand-writing. I am satisfied from that entry that I paid him a dollar and thirty two cents.

What amount of money did you hand in that way to Judge Hubbell?

A. I think, sir, the amount of two hundred and sixteen dollars and ninety six cents, less the dollar and thirty two cents, which was not paid in.

Cross Examination.—Q. Was this whole proceeding of the order and paying in the money, in open Court.

A. The whole proceeding of the order was in open Court; but the paying of the money may have been made after the adjournment, or at the side bar. There was some talk between the attorneys, about whether the money could draw interest—a sort of triangular conversation about it.

Q. Was it in the presence of the parties or their attorneys?

A. I could not state distinctly in regard to that. It may have been; for if it was after the adjournment of the Court, it was immediately after—within five minutes.

Q. Did Mr. Vilas intend that it should draw interest after it went into Court.

A. I think not, sir. I have not a very distinct recollection about that; but I think Mr. Collins inquired if, while it was lying in Court, it could draw interest. He either wished the money paid into his own hands, or he wanted interest on it. Mr. Vilas did not want it to go into his hands till the final determination upon the bill. I gave a receipt myself to Mr. Vilas and Judge Hubbell, as the Judge gave me a receipt. I remember the term being opened early in the morning, and Mr. Collins was present. My impression is, I did nothing more than to take the receipt, which was in my hands in a private file, and hand it to Mr. Collins; and paid no attention to what was going on between Judge Hubbell and him. I think it was before the final adjournment of the special Court.

Q. Have you not been called on to remember what the rate of interest was.

A. It strikes me that Mr. Collins did call one day to examine the note which was filed to see what rate of interest the note was bearing.

AFTERNOON SESSION.

LEVI B. VILAS was called and examined upon the second specification of article five.

Q. Were you one of the complainants on a bill filed in the circuit court of Dane county, against R. J. Lansing and others. A. I was.

Q. In the course of that suit did you pay any money into the court.

A. I did.

Q. Did you pay it, intending to pay it for the purpose of saving the note from being prosecuted.

A. From what Mr. Atwood told me I supposed it was so paid. I was sick and did not know about it myself. Mr. Atwood told me that the injunction would be continued if the money was paid in. Though my health was poor, I went up the next morning, saw Mr. Burdick and told him I wished to pay that money that was to be paid in to the court. I suppose till I heard Mr. Burdick this morning, that I paid the amount stated in the docket—$216 96.

Q. What conversation occurred at the time of paying the money into court.

A. I am unable to say exactly. I think, however, there was no conversation. The money was paid to the clerk, and I have no recollection of conversation. The conversation to which you allude, probably occurred in open court.

Q. State what conversation you had with Judge Hubbell in relation to interest on the money.

A. I never had any conversation with him alone in the world. The only conversation I know of, occurred something in this wise: either the money had been or was to be paid into court. I sat by the side of Mr. Collins. I rallied Mr. Collins about the money, saying, if you hadn't procured the money to be paid into court, you would not have lost your interest. He immediately started up and says: "how is this? What is the effect of my having the money paid into court? Shall I lose the interest?" I am not positive whether the Judge inquired of the clerk whether he would pay interest upon it or not. Then the Judge upon the bench, replied: "the court will see to it Mr. Collins, that you get legal interest;" and upon that they settled down to be quiet. I insisted that I had nothing to do with it any further. I understood that that was satisfactory to Mr. Collins.

Cross Examination.—Q. Were you present when the money was paid over to Judge Hubbell?

A. I was not, when it was paid to any body. The case was continued to the next term, and the next term the Judge insisted it must be disposed of. He would not put it off any longer; and I thought crowded the case along pretty well; however, I found no fault about that; it was disposed of at that special term. I do not know, only from what Mr. Collins told me, about the money being paid over to Judge Hubbell. I was not present.

Mr. COLLINS called, sworn, and examined on the same specification.

Witness. I reside in Madison; am an attorney at law; our firm in 1852 was Collins, Smith & Kissam.

Q. Did your firm receive that note for collection?

A. It was sent to me individually, but the firm had it for collection, for Corwith & Co.

Q. Do you recollect a bill in Chancery of Vilas and Varney, the makers of this note against Lansing and others. A I do, sir.

Q. Was this the note mentioned in the pleadings in their cause.

A. I believe it is.

Q. Did you appear in that suit for any party.

A. Yes, sir; I entered an appearance – or our firm did—for the defendants, Carwith & Co. I am not certain whether for Lansing or not. I appeared for our firm for the bill, and, perhaps, it was filed for all the respondents. I am not certain now how that was. The demurrer was filed by our firm. I think this is the demurrer to the original bill before they were admitted plaintiffs. There was a supplementary bill afterwards.

Q. Will you state in detail to the Court, all that occurred with Judge Hubbell in relation to that suit, from the time of filing the demurrer till the time of payment of the money into the Court, and how the order came to be made giving leave to pay it into court.

A. I cannot state to a day and term perhaps, but to the best of my recollection it was filed in the fall term of 1851, though I am not certain as to the year. This demurrer was interposed; the cause was continued at a special term, in January, I think, upon motion of Mr. Vilas, for the reason that he was not able to attend to it, nor argue it. At the spring term afterwards, of 1852, I crowded the case pretty well. I stated as a reason that the note was placed in our hands for collection, and we wanted the case disposed of so as to collect our note, Mr. Vilas wished the case continued. There was some intimation that it could not be continued unless within some rule. I stated that I wanted to be in a situation to collect that note; I wished to oblige my clients by collecting their money as quick as I could; finally, I think I said, if the money could be brought into court—if he would put the money where we could get it, I would consent to a continuance. Mr. Vilas agreed to the arrangement, and in pursuance of that arrangement, the money, with the interest, perhaps, up to that time, was brought into Court and paid to the clerk. Mr. Vilas said he had no objection to bringing it into Court, because it would stop interest. I replied, that if I did consent to bring it into Court, I did not think it would stop interest until we could get possession of the money. If he permitted it to remain in Court for his interest and not for ours, I told him that I thought interest must be paid. From this conversation Judge Hubbell made some remark like this: "I will take the money and give interest on it." That is all that I knew about it, until some time after, at the next fall term I think. I learned that the money which Mr. Vilas had paid into Court, had been taken by Judge Hubbell. I think he placed his receipt on file. I saw Judge Hubbell's receipt on file for that amount of money. I made no remark about it, and thought nothing in particular of it. The money was brought into court, as I understood, upon my offer. At the fall term I insisted upon having the demurrer argued, and Mr. Vilas submitted the case without argument. My impression was, that the cause was submitted at the fall term, and kept under advisement till the next term; though I won't swear that that was the case. I cannot remember whether it was to be continued under advisement or not,

though I think so. That cause was finally disposed of, by the complainant withdrawing his own bill. I am not certain whether his Honor pronounced a judgment demurrer or not, or whether Mr. Vilas discontinued the suit. It was intimated in some way, that the demurrer would be sustained, and that would operate to dismiss the bill. I afterwards received the money which had been paid into court. I received it during the term at which the cause was disposed of, from Judge Hubbell, in the shape of a check. I cannot tell whether I asked him for it; I think he voluntarily handed me his check. I do not think any words passed between us, excepting that he said: "If you should not want to remit that within three or four days, I shall be at home at that time, and I would a little rather you would not send the check." I sent the check soon after, and it was paid.

Q. What occurred afterwards on the subject of interest.

A. I do not know that at the time any thing was said about the interest, although my impression is, that he said I ought to have the interest, and if Mr. Vilas would not pay it, he would. I think I said, the money was there for Mr. Vilas' benefit and that he ought to pay the interest on it.—Subsequent to that time, having had conversation with Mr. Vilas in which he declined paying the interest, I wrote to Judge Hubbell. I thought we were clearly entitled to interest. I think I told him that Vilas had agreed to pay interest when the money was paid into court. Judge Hubbell wrote a letter in reply to mine, saying he should be out soon, and whatever was right he would do. I think, however, that he said in his letter that it was not the understanding that he should pay interest. I think that the letter is in my office now.

Cross Examination.—*Q.* The term at which this suit was disposed of you say was a special term.

A. I think it was. I recollect that it commenced early in the morning.

Q. Do you recollect that on that occasion the Judge called your attention to the fact that he had the money.

A. My recollection is, that the Judge gave me the money that term without being asked for it.

Q. Do you recollect that the Judge resisted Mr. Vilas' wish to have the cause continued.

A. I think he did. I think the case was continued, in whatever shape it was continued, by my assent. I urged the case on, and I thought the Judge was of the opinion that I was entitled to press the case; and I think the case was continued with my consent and understanding at that time. That is my recollection.

GEORGE B. SMITH called.

Q. Do you recollect the suit of Varney and Vilas against Corwith & Co.

A. I do.

Q. Will you state your personal knowledge of your proceedings in the case from the time the demurrer was filed, until the cause was disposed of.

A. I did not myself, pay particular attention to that case. It was commenced in my absence, and I was absent several times during its examination. I was there, however, when something was said in relation to paying the money into Court. I was not there when the money was paid in. I understood, however, that the money was paid in in some way. I know that I did not see it paid in. I know no more about it, nor quite so much as has been related by Mr. Collins here.

Q. Had you, in the progress of that suit, any conversation with the Judge in relation to the demurrer.

A. Well, I don't know whether I had or not; I know this, however, that Judge Hubbell remarked, that he thought the demurrer must be sustained; and that the bill was a bad one, for this reason particularly, that the proceeding would not lie in such a case; that he had taken his warranted deed, and must rely upon his deed. My impression is, that that was the first time the question was raised at all. I know I went to the office myself. The Judge suggested what the law was, and he thought we had the brief of the law. But we thought the question was very plain. We did not take the authorities up. I know I went to the court-house and got the authorities, and they were read. My impression is, that I read the authorities. That was the first time the cause was up. I do not remember what term. The demurrer was argued two or three times, in fact.

Cross Examination.—*Q.* Do you recollect the fact that after this case was submitted, at the October term, and the demurrer argued, that it was continued on application of Mr. Vilas, to accommodate his illness. A. Yes, sir.

Q. Did not the Judge say that you were entitled to bring on the case.

A. I understood the Judge to say so in the outset. Mr. Vilas was really unwell, for one term at least, and could not appear there. I really think he wanted it continued but would not say so. There was some little sparring between the Court and Mr. Vilas. Judge Hubbell said he would give him time. Mr. Vilas said, "I want you should; it is your duty to furnish authorities upon this case." That was after the Court was agreed to be continued.

Mr. Arnold asked Mr. Vilas—Was the cause argued at the October term, and was the case continued on your application.

Mr. Vilas. There was no argument. There was some talk and then a difficulty suggested from myself, and upon that, I am inclined, since hearing the estimony of Mr. Collins, to think it was by the consent of Mr. Collins that the case was continued.

Q. Did Judge Hubbell say that it must be decided by the December term.

A. Yes, sir; he was very firm about that; and if there had been no interference, I think he would have decided it at that term. The Judge remarked that it must be disposed of at a special term at all events.

Mr. Collins re-called.

Q. Is that the letter mentioned in your testimony, a short time since.

A. Yes, sir.

Q. Will you read aloud so much of that letter as relates to the transaction in relation to which you were examined.

Mr. Collins here read from the letter as follows:

Milwaukee, Jan. 25, 1853.

Dear Sir:—Your letter came duly to hand, but *without* the check, which you say is "enclosed." I had supposed the check had been sent on by you, immediately on its being drawn. The money was then in Bank, has been, and now is, to meet it.

In regard to the interest, I recollect (on your recalling the transaction) that after the money was paid into Court, Mr. Burdick declined paying interest. Mr. V. claimed that he ought to get it, and I then said to him, that I would take it and pay interest. I do not recollect however, that 12 per cent was men-

tioned, or that any per cent was; but it may have been. When the receipt was procured, on the morning I left Madison, I had forgotton about it, wholly. I had the money ready to pay Mr. V. in October, and it was put off on his account. I have since had no use for the money, and do not feel disposed to pay 12 per cent, unless I agreed to. I will pay 7 per cent, from 1st May to 1st January—say 8 months, as you shall direct.

Please write me, and I will to Mr. Vilas, in respect to my supposed agreement to pay more. * * * * * *

Believe me, very truly yours,

LEVI HUBBELL.

The foregoing is a true and accurate copy of the whole of that part of Judge Hubbell's letter to me of the foregoing date, in relation to the subject of the Vilas money.

A. L. COLLINS.

June 17, 1853.

Witness. The check, I recollect, was delayed for want of an endorsement. I sent the check without endorsing it. I think, perhaps I was absent when the return letter came. I think it was before that time, because when I wrote to Judge Hubbell I said he ought to enclose the interest in the check.

E. V. WHITON was called, sworn and examined on the first and second specifications of the fourth article; and the first specification of the second article.

Q. Do you recollect a cause several times in the Supreme Court, while you sat in that court, of Howe and others against Cogswell and others.

A. I do. I recollect it was there several times by appeal. I cannot specify the term at which it was there first. It was on demurrer to the bill. It was very probably in June, 1850.

Q. Do you recollect its being there again several times upon interlocutory bills.

A. I do.

Q. When the cause first came to the Supreme Court did Judge Hubbell participate in the case. *A.* He did not.

Q. Did he assign any reason to his brethren for not sitting upon the cause.

A. I cannot be positive whether he or one of the other judges told me had been employed as counsel for one or both of the defendants on the subject matter of that suit, but so I understood.

Q. Did he continue to decline to sit for several terms and upon several appeals.

A. I do not recollect how long he declined to sit. I do not recollect that he declined to sit more than once. I recollect the last appeal in that case. It was an appeal from an order of Judge Larrabee. I do not recollect much about it, except that it was an interlocutory one.

Q. Do you recollect, that in point of fact, it was an order dismissing the cause.

A. It may be so, but I do not recollect.

Q. On that last appeal did Judge Hubbell, as one of the Judges of the Supreme Court, sit and participate in the discussion and judgment upon the appeal. *A.* He did.

Q. At what time?

A. It was the last time it was the subject of discussion. Indeed the term at which it was decided was the last time. I think it was in December term. It was argued at the June term, and decided at the December term, 1852.

Q. Did Judge Hubbell, at both of these terms, sit as judge in the cause, and participate in the deliberations of the Court? *A.* Yes, sir.

Q. Did he assign to his brethren in the Court any reason for doing so?

A. I do not know that he did. He, or some one else, assigned as a reason, that he had been of counsel for Cogswell, and Cogswell being out of the case, he therefore sat. I say that the case was decided at the December term, 1852. The order was then reversed.

Q. Will you state whether in that decision, Judge Hubbell concurred with a majority of the Court, in reversing the order. A. I so understood.

Q. Did he in the consultations of the Court, upon the subject of their decision, upon that appeal, take part among the judges there to induce the reversal of the order. A. He expressed opinions as we all did.

Q. And they were in favor of the reversal of the order. A. I so understood it.

Q. Do you recollect the case of William S. Hungerford against Caleb Cushing, in the Circuit Court of Dane county? A. Yes, sir.

Q. Was that appeal in the Supreme Court, at the December term, 1851, and June and December terms, 1852?

A. I do not recollect. I know it was continued one or two terms.

Q. Do you recollect a discussion in this room, in regard to the hand-writing of a bond, or an affidavit, or a justification to an appeal bond?

A. The main discussion was, as to what it read; one side maintaining that it read one thing, the other side that it read another.

Q. In the several terms of the Supreme Court, did Judge Hubbell sit in the case as one of the judges of the Court, and participate in the deliberations and decision of the case. A. Yes, sir.

Q. That was an appeal, was it not from a final decree of the Circuit Court of Dane county?

A. Yes, sir; those matters which were discussed at previous terms, were on a motion to dismiss the appeal. The decree appealed from, was a final decree. It was argued on the part of the complainant that it was interlocutory, and that the appeal was not taken in time.

Q. Was that decree reversed? A. It was.

Q. Did Judge Hubbell, as one of the judges of the Court, leave it to the majority of the Court in reversing that decree; or did he dissent?

A. I understood him to be adverse to the question decidedly. Of course we did not decide, only as to a single question—that is, as to their being a proper party before the Court.

Q. Did he use arguments against what was the final decision of the Court?

A. I so understood it.

Q. Do you recollect a suit in the Circuit Court of Racine county, in which Jonathan Taylor was plaintiff, and the city of Milwaukee defendant?

A. I do. I decided that cause, as judge of the Racine county Circuit Court.

Q. Where did you come to a decision?

A. I think here, in this town. It was at a session of the Supreme Court.

Q. Did Judge Hubbell, prior to your coming to that decision, or making up your judgment, speak to you on the subject of that suit. A. Yes, sir.

Q. Will you repeat to the Court what he stated to you on that subject.

A. At that time he told me in substance that he had received a letter inquiring if that cause was decided—naming the cause—I replied to him that the cause was submitted to me. I received it by letter, stipulating to leave it to me. It came to me just as I was leaving Racine. I put the papers in my trunk,

and had forgotten to look at them. Afterwards looked at the papers and told Judge Hubbell I thought I could not decide it here without a further stipulation. He mentioned the names of the attorneys; said they were here, and said a new stipulation could be obtained, and one was obtained. The new stipulation was signed in the first place by Holliday and Orton on the part of the city, and by Brown and Cross on the part of the plaintiff.

Q. Had Judge Hubbell spoken to you at that time, about the merits of that case. A. I do not remember that he did.

Q. Would it not impress your memory if he had.

A. I have no doubt it would; but I have no idea that he did. I remember about the time I did decide it, after I had written the decision out, he asked me if I had decided. When I told him I had, he wanted to know how. I replied, I gave Taylor judgment. He replied, "I suppose you had as good as decided it in Milwaukee." The same question was before the court there on an application for a mandamus. I refused the mandamus, on the ground that the applicant had been indemnified. It was brought upon the same state of facts, as nearly as I can recollect.

Mr. KEENAN, recalled and examined upon the first specification in the second article.

Q. Have you the transcript and the papers in the case of Levi Blossom, against the city of Milwaukee. A. I have.

(The papers were produced and read.)

Q. Have you the transcript of the case of W. W. Graham against Joseph O. Humble. A. I have.

(The papers were produced and read.)

Q. Have you the transcript and record in the case of William Y. Miller against Humble and others. A. I have.

(The papers were produced and read.)

Q. Have you the record in the case of McBride and others, against Comstock and others—that is, the record mentioned in the first specification of the fifth article. A. I have.

(The papers were produced and read.)

Mr. S. O. WEST was called, sworn and examined on the first specification of the second article.

Q. Are you the clerk in the city of Milwaukee. A. I am.

Q. Those books and papers are portions of the records of the city of Milwaukee. A. *That* book is a record of the common council, and *this* book is an order book.

Q. Is it the habit of the city of Milwaukee to take receipt on the stocks for the orders issued. A. It is.

Q. In issuing an order, was it the habit of the city to take it up by bond.

A. It was.

Q. Was that order for twelve hundred dollars funded by bond.

A. It was; and on the same day, I think, that the order was issued. The order was issued because the common council thought they had no other legal way to pay the debt. Mr. Blossom was to take a bond and not an order. The agreement between Blossom and the city, was to take a bond. The act only authorized the city to issue orders.

Q. Have you with you the bond which was issued for twelve hundred dollars to Levi Blossom. A. I have.

(Witness produced said bond.)

Q. Have you any knowledge of issuing any other bond of twelve hundred dollars to Mr. Blossom. *A.* I have not.

Mr. RYAN. Endorsed is—"Presented for payment by Alexander Mitchell."

Mr. MITCHELL, recalled.

Q. Is that the bond which you received from Judge Hubbell, and which you returned to the common council, to be cancelled and exchanged.

A. There is no mark of mine upon it, by which I can identify it, but it is of the same amount, and issued about that time.

Q. Did you in the spring of 1852 have more than one bond of twelve hundred dollars payable to Levi Blossom. *A.* No, sir.

Mr. ARNOLD. What is the use of showing the bond.

Mr. RYAN. Why, it identifies the whole transaction, as testified to by Mr. Taylor.

Mr. ARNOLD. If that is all, sir, I object to any thing more of the kind.

Mr. WEST recalled.

Q. Were you a member of the common council at the time. A. I was.

Q. Who was the city Treasurer? A. Lucas Seaver.

Mr. RYAN. The object of this question is to show the extent of the injunction. I propose to show that city orders were at that time receivable by the city, for taxes, and according to a resolution it was enjoined from paying out any monies. Now, the question is whether receiving the orders was not a violation of that resolution. I rather suspect they were nearly the same thing as money.

Cross Examination.—*Q.* Were you acquainted with the monetary condition of the city? A. I was.

Q. At the time of the service of the injunction, was there any money in the treasury? A. There was not.

The Court adjourned until to-morrow morning.

ELEVENTH DAY.

SATURDAY, June 18.

MORNING SESSION.

Mr. KNOWLTON. I would regret extremely to take any course to delay the action of this Court; at the same time I am exceedingly anxious that every member of the Court should be present during the taking of evidence. Senator Miller, I understand, is unwell, and as he will probably be only temporarily absent, if the managers could arrange it, so as to receive no oral testimony—if documentary testimony can occupy the attention of the Court during the day—we should much prefer it. I call the attention of the Court to this matter, that they may act in my client's behalf as they deem to be just.

Mr. RYAN. We have been looking over the articles of impeachment, and we find that we can read but one record, and that has not been brought here. We are now somewhat in advance of the oral testimony already given in our reading of records. I suppose there would be the same legal objections against the reading of records, as against the taking of oral testimony, in the absence of any senator. We can read some records this morning, but they would be altogether out of place.

Mr. KNOWLTON. Suppose you call the witnesses in the Hungerford case; the records in that will occupy a day certainly.

Mr. RYAN. Oh! not a day, I do not think. Well. I will introduce some records. I do not know how long it will take. Perhaps it will take sufficient time to occupy the court during the day.

Article 6, specification 2.—John Lowry and Archibald Lowry vs. James P Greves and Abel W. Wright. Declaration filed May 19, 1849. Motion in the circuit court of Milwaukee county, by James P. Greves, to vacate judgment in Court, filed the 13th day of September, 1851.

Article 7, specification 1.—John F. Baasen vs. John Anderson, *et. al.* Precipe, for writ filed January 20, 1852. Writ of subpœna to answer, September 29, 1851.

Order by defendant, returned served March 12, 1852. The following order was entered the same day: another order was entered for publication of notice not served on non residents. Date, March 11, 1852.

Separate bill of Byron Kilbourn, filed April 19, 1852.

Separate answer of C. F. Le Fevre, filed June 11, 1852.

Separate answer of E. B. Wolcott, filed June 25, 1852.

General answer of Leonard J. Farwell and James Farwell, filed July 2, 1852.

Order made by Judge, July 9, 1852.

Order made on motion of E. Mariner, solicitor for James S——, by Court, October 10, 1852.

Article 9, specification 6.—Michael McGrath vs. William Cook. Bill in chancery, filed December 29, 1851. Subpœna issued same day; served December 30, 1851. Injunction issued by the clerk same day.

Mr. KNOWLTON. Who allowed that injunction?

Mr. BARBER. H. W. Tenney, Court Commissioner, December 29, 1852.

Judge HUBBELL wished to know if all the papers in that case were here, and if they would be retained, as it was necessary for his defence that they should be retained in Court.

Mr. RYAN said they were all here, and he intended to retain the witness with them until the case was submitted.

CALVERT C. WHITE was sworn.

Mr. RYAN. Are you the Deputy Clerk of the Circuit Court of Waukesha county. A. Yes, sir.

Q. Have you the record of that Court which you were subpœnaed to bring with you. A. Yes, sir.

Mr. RYAN took the papers of Mr. White, and Mr. Barber read—

Article 6, specification 3.—Burr S. Craft vs. Margaret N. Craft. Petition for bill of divorce, filed April 3, 1852; sworn to by Burr S. Craft. Deposition filed, and order made by Court, October 8, 1852. Bill of complaint, October 8, 1852. Decree made granting divorce by Judge, November term, 1852.

Article 7, specification 2.—W. H. Howe, indictment for perjury, presented in Court November 16, 1850. Endorsed as a true bill by Foreman of Grand Jury, and also endorsed by the District Attorney.

Mr. SANDERS asked that a writ of attachment be issued for Leander Wyman, who refused to obey the summons of a subpœna.

Senator CARY moved the adoption of the following rule: Ordered, that a fine of fifty dollars be imposed on each witness who shall be attached for any neglect

or refusal to obey a subpœna issued by this Court, and that they remain in custody of the Sergeant-at-Arms, until said sum be paid, unless the said fine shall be remitted by order of this Court, for good and sufficient cause.

Senator DUNN: Wished to be informed if the rule was meant to apply to all attachments ordered by this Court.

Senator CARY: In drawing the order did not intend to have it apply to those cases where attachments had been issued by the Court, but to those who might hereafter be attached.

Senator DUNN: Did not approve of the order. Courts have a right to impose such fines for neglects or refusals to obey subpœnas, as the circumstances attendant upon such different cases may indicate to be just and equitable. There are instances in which the circumstances would warrant the imposing of a heavy fine; whereas in other in stances the fine would be very moderate. He also deems it improper to impose arbitrary fines until the case shall be heard, and the person attached shall have the opportunity of making any apologies or excuses which he may have for refusing to appear. When these matters are brought, as they will be before the close of the Court, then the Court can impose such fine as they shall deem proper in each separate case.

Senator CARY: Agreed with the Senator from Lafayette county, in the application of the principle to ordinary courts, but the general rule appears to be deviated from by witnesses subpœnaed upon this trial. In ordinary Courts witnesses generally attend the Court in compliance with their subpœna, but in this Court the witnesses very generally *refuse* to attend. He thought it was necessary some such rule should be adopted, as the impression prevails that the Court will adjourn without paying any attention to these cases of neglect. An opinion prevails that the Sergeant-at-Arms will not only bring witnesses here, but that he will *board and keep them!!* He understood that several such applications had been made to the Sergeant-at-Arms. If the Court is to sit in judgment upon each case of attachment, much more time may be spent upon these collateral causes, than upon the main one.

Senator ALBAN moved to amend by striking out the word "fifty," and insert instead thereof, the words "no more than $100, nor less than $5 00."

Senator CARY. I accept that amendment.

Senator REED: Supposed the order was drafted for the purpose of reaching the particular case of Mr. Wyman. He was acquainted with Mr. Wyman, who was a young man in limited circumstances, and it may be that he had not sufficient money on hand to pay his fare out here.

Senator CARY: Did not know at the time he wrote the order that Mr. Wyman was a delinquent.

Senator REED: Supposed he drew it for that especial case, because the managers had just asked for an attachment to issue against Mr. Wyman.

Senator DUNN. The amendment proposed by Senator Alban does not meet the objections he has against the proposed order.—Its adoption would be the reversal by this Court, of a rule acknowleged in all courts of justice. The presumption is, that every man is innocent until proved guilty. Every person, for whom an attachment may issue, should have the opportunity before the imposing of a fine to establish his innocence, and in the absence of such proofs of innocence, the Court have a right to impose a fine. He is opposed to the adoption of any such rule. It is no argument in its favor that witnesses who

are summoned fail to comply with the summons according to law. I apprehend it will use up but very little time to attend to these matters of attachment. Each witness will be called up, and if he has no excuse he will be fined.

Senator CARY: Did not agree with the Senator from Lafayette county, in regard to the proof of guilt. He thinks that when a witness has been subpœnaed, and is not present, it is sufficient proof that he is guilty, and it is for the witness to prove himself innocent.

Senator STEWART: Did not see that any thing would be accomplished by the adoption of the order, as the Court have full power without it to impose such fine as it may be deemed just under the circumstances.

The motion to adopt said order was not agreed to. Ayes 8. Noes 14.

The attachment for Mr. Wyman, was ordered.

The Court adjourned to Monday morning at 9 o'clock.

TWELFTH DAY.

MONDAY, June 20.

MORNING SESSION.

FRANCIS RANDAL was called, sworn and examined on specification one, article two.

Witness. I reside in Milwaukee; my profession is attorney at law.

Q. Do you recollect a bill in chancery filed by Levi Blossom against the city of Milwaukee, in aid of judgement recovered by Jonathan Taylor against the city?

A. I do. I appeared on behalf of the city, and moved to dissolve the injunction.

Q. Was that motion heard and determined in your presence. A. Yes, sir.

Q. What judge presided on the bench. A. Judge Hubbell.

Q Will you state to the court what took place orally upon the hearing of that motion.

A. I moved to dissolve the injunction, and stated the reasons, orally, to the judge. The judge refused to allow the motion, and stated that he did not know any reason why the city of Milwaukee should not be compelled to pay its debts as well as any body else. He consented to some modification of the injunction. I cannot undertake to relate the language he used.

Q. Will you state the ground used by you in argument in reply to that remark by Judge Hubbell.

Mr. KNOWLTON. Mr. Ryan, do you contend that this is proper evidence. I shall object to the question, Mr. President. We think it is quite immaterial what arguments may have been used by counsel on either side. They have called forth what was said by Judge Hubbell on that occasion, which is quite as far as they are permitted to go. The argument in reply has nothing to do with this case. It is never within the rule to prove what counsel said.

Mr. RYAN. Mr. President, the subject of the testimony which I wish to call from the witness, was principally suggested to my mind by a course of examination made by the defendant's counsel, upon Friday last, I think when this specification was before the Court. When Mr. ——— was upon the stand, one of the counsel for the defendant, inquired of him, whether, at that time there

were any funds upon which that injunction applied. The witness replied, he believed there were not. The obvious purpose of that question was very evident. It was designed to show that there was no hardship created by that injunction.

Mr. President, we propose to show that the city of Milwaukee, as a part of the political machinery of the State administered a great many funds, for example the School Fund. It was a part of the machinery of the government, and all the funds administered by the city, whether School Fund, Trust Fund, or any other funds, all were tied up by that injunction. Now we propose to prove further, by this witness upon the stand, that the very ground upon which the motion to dissolve that injunction was argued, was that the city of Milwaukee was a municipal corporation, a part of the political machinery of the government of the State, and was not the subject of a common creditors bill, enjoining all other funds, to enforce the payment of a judgment, and that the very injunction would operate to tie up funds, which were merely administered as a political body of the city of Milwaukee, and to follow that up by showing that there were large amount of funds tied up by that injunction; all springing from that question put by the defendants counsel, as to whether there were any funds tied up.

Mr. KNOWLTON. I am not conscious that the gentleman has reached the objection which I have raised. It occurs to me that it is a new mode of meeting an objection to evidence, to reply that counsel for defendant has gone into particular questions. It does not occur to me whether it is legal or not. The question the gentleman alludes to, was propounded by Mr. Arnold, not by myself, certainly. My recollection of the question is, whether there were any funds or monies in the treasury of the city of Milwaukee at that time. The gentleman is at perfect liberty now, to state whether he knows there were monies in the treasury at that time or not, and then he will have had the same latitude that Mr. Arnold took on a previous day; but that does not meet this objection at all. He does not propose to inquire into this matter, either in relation to the purport of what the corporation of Milwaukee had done, in reference to which this injunction applies; but he proposes to call forth the arguments of counsel upon that objection. Whether those arguments were well or ill founded, they have nothing to do with the charge set forth in this specification. I suppose it is quite immaterial what argument may have been used upon one side or the other. The city of Milwaukee, being a part of the government of the State, in a certain capacity, when a gentleman makes certain inquiries in relation to those subjects, that will be a matter for future consideration, but to call forth the arguments of counsel is a proceeding unheard of. I presume the gentleman will not contend that he can establish the correctness of such a course by any precedent in the courts.

Question submitted to the court and rejected. Ayes 3, noes 21.

Mr. RYAN. Mr. Randall, had you after, or about the time of that motion, any conversation with Judge Hubbell on the subject of that suit.

A. Subesquent to the motion, I think on the same day at the recess of the Court, or perhaps the next day, Judge Hubbell said to me —"I wish that suit could be settled." I think I replied to him, I should be glad to see it settled, or something to that effect. There was no witness to the conversation.

JAMES K. SMITH was called, sworn and examined, on the fourth specification of article four.

Q. Are you the brother of Andrew Smith. A. I am.

Q. Were you in 1850, the agent in this state, of Andrew Smith.

A. I was an agent in part of his business. He resided in New York city.

Q. Did a claim accrue to Andrew Smith at any time, against the Milwaukee Insurance Company. A. Yes, sir.

Q. Did you consult any counsel upon the subject of that claim.

A. I consulted with Finch & Lynde. I did not, prior to that time, consult with any body else, with regard to the claim. I made the preliminary proofs of the fire in Waukau. I took them to the agent's office. I went first to Gen. Hubbell, who was then called the agent of the Ætna Insurance Company, at Hartford. He said the proofs were not drawn out legally—the proofs for both companies.

Q. What did Judge Hubbell say to you about your being able to get the money from the companies.

A. I do not think he ever mentioned to me any thing about them.

Q. Did you at that time employ Judge Hubbell as counsel against the Milwaukee Mutual Insurance Company.

A. I requested him to draw out a legal form of proofs, that I might return to Waukau, perfect them and come back with them. I had no idea at that time, of a suit commencing. I requested him to act as counsel, but he said he could not hear a single word about it.

Mr. RYAN. I speak now of the first interview, Mr. Smith.

Witness. Well, to go into the whole of it, I got an extra insurance on the 10th of July, of Gen. Hubbell, for fifteen hundred dollars. That was 1848. I think I got the papers on Thursday night, and on Friday night the fire took place. I went to Milwaukee as I said, and requested him to furnish me a form for preliminary proofs, and said I would go back and get the proofs made out correctly before I served them upon the other office. I came back either on Tuesday morning or Wednesday. In giving my evidence before the committee, I think I said that it was six days before I returned, but on getting home, I found by my papers that I was back in three days. I then asked him to be counsel in the case. After going to Mr. Day about it, I found it was going to give me trouble. Gen. Hubbell said he could not hear a single word about being counsel, because he had just been elected judge. The first time I went to him, I did not retain him as counsel. The fire took place on Thursday, the 31st day of August. I went in on Friday afternoon, and got there Saturday. At that time I did not know that he had been elected judge.

Judge Hubbell addressed a remark to the witness.

Mr. RYAN. If the gentleman will allow me to examine the witness, I will examine him. I want nothing but facts, and I am asking the witness for nothing but facts.

Q. Did Judge Hubbell at any time refer you to Finch and Lynde as counsel in that matter.

A. He recommended Finch and Lynde the second time I saw him.

Q. Now, I wish you would recollect and state whether the first time you went and saw Judge Hubbell, and before you went back to perfect your preliminary proofs, you did not employ him as your regular counsel.

A. I did not, sir. I might have said that I might wish to retain him as a lawyer.

Q. I wish you would recollect, also, and state whether, at that first interview, he did not say something to you about the probability of your having difficulty in getting payment of the policy of the Milwaukee Mutual Insurance Company.

A. I think he did say I might have trouble on account of Mr. Day.

Q. Did you not then, Mr. Smith—I am now trying to refresh your memory—did you not then retain him as counsel.

A. No, sir. I never retained him as counsel; I might have said something about that; I might want him.

Q. Did he draw the form of proof.

A. He drew a copy for his own office, and I copied that for the other office also.

Q. Before the examining committee last winter, did you testify this—"He said I could get the money of the Ætna Insurance Company, but he thought I would have trouble in getting my pay of the Milwaukee Insurance Company. I then employed him as counsel."

A. I might have said that he made the remark in regard to the Milwaukee company; but the fact is, I was drawn before the committee the next morning after I was subpœnaed, and I had no time for reflection as I have had since, and do now. I might have made the remark then, that I expected Mr. Hubbell would attend to it. He made no reply that I remember of, when I said I should expect him to attend to it.

Q. When you first went to Judge Hubbell, did you show him the policy of the Milwaukee Mutual Insurance Company, and the endorsement on it.

A. I think it is very likely I did. I had them both with me. I had all the papers tied up together. I showed him the endorsement. He had the policy along with the policy of his own office. The renewal was endorsed upon the policy in such a way, that I had a doubt about ever recovering a cent from the Milwaukee company.

Q. Having shown the policy and endorsement at that time, did you consult him or did he advise you, with regard to the liability of the Milwaukee company? A. No, sir.

Q. Were you present at the trial of that cause, when it was tried in the Circuit Court of Milwaukee county? A. I was.

Q. Who presided? A. Judge Hubbell.

Cross Examination.—Q. Will you state whether you transacted the business for your brother, in relation to the policy of the Milwaukee Insurance Company?

A. I transacted the business for him as far as calling upon the two Companies for settlement was concerned. When writing to my brother, I said to him that he had better employ Finch & Lynde. They were instructed to commence a suit, if the policy was not paid in ninety days. I did not procure the policy; it was procured by Mr. Snow, a partner of mine.

Q. Was there an increase upon the policy of the Milwaukee Mutual?

A. There was no increase upon the Milwaukee policy.

Q. Was there upon the other? A. Yes, sir.

Q. Was the policy of the Ætna company increased after the issue of the policy by the Milwaukee company?

A. I think the policy was issued by the Milwaukee company two years previous to the burning. The endorsement was put on in 1847. On the 10th day of July, I had a policy run out in the Hartford company, of twenty-five hundred. I went into Milwaukee to get it renewed, but Mr. Baker refused to renew it. I then went to Judge Hubbell to get an extra insurance, making in all three thousand dollars.

Q. On that occasion did you present to the Judge your policy of the Milwaukee Mutual, before he took the additional risk. Did he take any memorandum of the policy.

A. I cannot remember that he did. It was laid before him, that he might see what the insurance was upon the mill, besides the fifteen hundred in his own office. Then I went and had the additional risk endorsed upon the policy.

Q. Did you ever pay any thing to Judge Hubbell as counsel in that cause?

A. No, sir.

Q. I wish you would state to the Court whether you ever did anything more towards retaining Judge Hubbell in that matter, than in saying that you might wish his services?

A. I never went any further than that.

Q. Was that remark made by you to him at a conversation in relation to the claim against the Ætna company.

A. No, it was in relation to my claim against the Milwaukee company.

Q. In your first interview, you say no remark was made.

A. I made that remark at the first interview.

Q. Now, was not that when talking about the claim against the Ætna company.

A. There was no conversation about the Milwaukee company at the first time. I never liked the endorsement that Day got put upon my policy; it was done in a hurry, and I did not examine it sufficiently at the time.

Mr. KEENAN recalled, and produced the records and papers in the suit of Andrew Smith vs. the Milwaukee Mutual Insurance Company.

(The papers were read to the Court.)

ARTHUR MCARTHUR was called, sworn, and examined upon the first specification of article five.

Witness. I reside in Milwaukee; my profession is attorney at law. I recollect the suit of James McBride vs. Comstock and others. I was attorney for the plaintiff in that suit.

Q. Were you present in court when an order was made by the Circuit Court of Milwaukee county to sell property in that suit, noticed as perishable property.

A. I was.

Q. What took place, orally in court, at the time the order was made.

A. The motion was made in open court, and Judge Hubbell thought the affidavit was rather imperfect. It was amended and sworn to on the spot, and a motion was made and granted upon the amended affidavit.

Q. Was there any thing said as to the money being paid into court.

Mr. KNOWLTON. Do you propose to prove the order.

Mr. RYAN. No, sir; the order is proved by the record, already.

Q. What conversation took place as to where the proceeds of that sale were to be deposited or paid.

A. Nothing at that time, only that which is contained in the order.

Q. Was there any thing said afterwards in regard to where the money should go?

A. Some time after the sale of the property by the sheriff, and the money had been realized, I mentioned to Judge Hubbell that I wished to obtain an order in that cause, to pay the money into Court; and that there were some considerable fees coming to the sheriff, which I wished paid out of the proceeds of the sale. He then said that I could make a motion, I think at a special term which he was about to hold, and that as he was the Court, I could have the money paid to him, or he would receive it, to which I gave some reply assenting. I was present when he received the check for the amount from the sheriff. The check was upon Mitchell's bank, I think.

Q. Did you, as plaintiff's attorney, at any time receive that money?

A. I did.

Q. At what time in the progress of the suit?

A. There was a stipulation entered into in the case to discontinue, and to have the money paid to the plaintiff's attorney, which was myself. I entered into that speculation, which was the basis for an order, which was entered into at the same time, directing the money to be paid to me. That, I think, was on Saturday, and I received the check in the early part of the following week.

Q. Is that the stipulation of which you speak? (showing a paper dated December 6, 1852.) A. It is.

Cross Examination.—Q. At the time this conversation transpired between you and Judge Hubbell in relation to paying the money over to the sheriff, I wish you to recollect and state whether the Court was about to, or had adjourned?

A. I think it was at the end of the general term in May.

Q. Do you recollect of stating to Judge Hubbell, that the sheriff was down street, and the judge then replied that he could take it down there, and make a receipt as well as in Court? A. Yes, I remember that.

Q. Do you remember that at the time you were moving this matter, and Judge Hubbell made the remark about the adjournment of Court, whether that was not the first time any thing transpired in relation to his taking the money and receipting for it?

A. The first time was when I mentioned to him that I wanted the order. He then remarked that he of course would grant the order, and that as he was the Court, he might as well take the money as the Clerk. That was before I made motion. I think it was the day following that I moved for the order.

Q. Are you distinct in your recollection as to the time when Judge Hubbell said any thing about taking the money? Was not that after the payment of the money by the sheriff, and did not you reply that the sheriff was down street, and then the judge remarked that he was going down street, and he could receipt the money there as well as in Court.

A. Yes; the first time I mentioned my desire to have the money paid into Court, and to have an order for that purpose, was in Wisconsin street, about the corner of Mason, and that was the first time the judge mentioned the subject of taking the money. After the order was obtained, I procured a certified copy of it, to serve on the sheriff. After I obtained the copy I think the Court had adjourned finally. I told the judge I wished that money paid into the Court at that time. I was particularly anxious because I wished the sheriff's fees paid at that time, and they were to be deducted from the proceeds. I told him the

sheriff was down in the city, and he then observed, he could go down, and the money could be paid to him there as well as any where. The judge had left the Court room and was then on his way down. I know we were going down, but about the particular phraseology used I won't be sure. I know the judge went down at my solicitation, and the sheriff then paid over to him, and he receipted for it. I think the receipt is on the record.

Q. Will you state whether it was not done at your request and for your accommodation—I mean the receiving of the money by the judge from the sheriff.

A. Well, inasmuch as the judge had previously intimated that he could take the money, it was for my accommodation he did it that afternoon, notwithstanding the adjournment of the Court. I had been unable to attend to it in the course of the day, before the Court adjourned.

Q. After this money was paid to Judge Hubbell, was any thing done in that cause, either at chambers or in Court, until you and some other person informed Judge Hubbell that the suit had been settled. A. No, sir.

Q. Do you recollect informing Judge Hubbell that the suit had been settled.

A. I do. Judge Hubbell told me to prepare an order appropriate to the case; that he was going to hold a special term on Saturday, and that if I would meet him then he would grant an order and pay over the money. I was sick and detained at home on Monday; I continued unwell on Tuesday and sent my young man to Judge Hubbell, and he sent back the receipt.

James P. Greves, called, sworn, and examined upon the second specification of article six.

Witness. I am acquainted with Judge Hubbell; I recollect a judgment of John Lowry against myself and Abel W. Wright.

Q. After the judgment had been rendered, did you cause a motion to be made to vacate that judgment. A. I did.

Q. Did you at any time before that motion was made to vacate the judgment, have any conversation with Judge Hubbell, as to why the judgment should be vacated. A. I had a conversation with him and others.

Q. Will you state when and where that conversation occurred.

A. Well, sir, I could not state the day; it was in September, I think, 1851, during the canvassing of the judicial election in the second circuit. I was present one evening when there were three or four others present in Judge Hubbell's room, in the United States Hotel. I could not state only substantially the conversation; there were several gentlemen present giving their reasons why they should vote this way, or should not vote that. I then gave my reasons why I should not vote for Mr. Finch.

Q. What reasons did you state?

Mr. Knowlton. Do you think that is necessary.

Mr. Ryan. I think it is necessary to give the whole conversation here; I do not know how else I am to get at it.

A. I do not know as I can give the whole of what I stated.

Mr. Ryan. Give what you can remember.

A. I stated that Abel W. Wright, one of the defendants in the suit, went to New York, and purchased some goods, when he came back he called upon me to become security for those goods; he said that after he purchased them, he found that on his return that there were directions from the Lowries that they should not be surrendered till sufficient security had been given. He called

upon me as a friend to become his security. He told me the amount of purchase. I told him I was not responsible, pecuniarly, for that amount. He then remarked that Asahel Finch, jr., had said to him that he would take me as security. I absolutely declined for that time, and said I would see Mr. Finch. I called upon Mr. Finch, and we had a conversation on the subject, in which I stated to him, that I was not responsible, and he knew it. He then said Wright was a clever fellow, and wanted him to have the goods, and said—"We are really the responsible parties," meaning Finch & Lynde; "we would like to have him have the goods and the required security." The result was that I signed the notes with Abel W. Wright; they were judgment notes. Finch advised that course; so that if anything went wrong, I could take possession of the goods at once. After he went into business, I found things were not going on right, and I conversed with him upon the subject. Among other things I found that he had paid more than he should have paid for the goods. In the groceries he could not compete; the trade was very bad. The notes were becoming due in April, 1849, I think. That was during the winter of 1848-9, if I remember right. When I called on Mr. Wright he stated that he was not doing any thing, and he must give up the business. He wished to go to California in the spring, and he must give it up. I suggested to him to see Mr. Finch and get him to take back the goods at cost; if he would take them back that way I wished to surrender them to the agents of the Lowries—that is, Finch & Lynde. He told me he saw Mr. Finch; I saw him too; he said he would take back the goods at cost price. This was before the notes became due—I think it was in the month of February or March. Mr. Wright gave up the goods, Mr. Finch took them, or at least so he informed me afterwards; I was not present when it was done. I had a great deal of confidence then in Mr. Finch. The business was rendered up. I did not know any thing about it until some time afterwards, when I called upon Mr. Finch for an inventory of the effects taken back, but could get nothing from him, he was always busy. Some time in the summer I got a slip of paper from him, merely stating the deficiency—some ten or eleven hundred dollars—it being much more than I thought or was assured it would be. I asked him if he sold the goods at cost price; he said he could not do it. I replied that he had agreed to do it; he said he did not recollect agreeing to any such thing. I still called for the memorandum. I never got it, and do not think any was ever made out. I tried in various ways to get him to settle; he told me he would write to the Lowries. It ended, finally, in his doing nothing about it. I then consulted a lawyer in town nearly a year afterwards, and asked his opinion what I had better do in the matter. He said that I had good grounds for having that judgment set aside, but he advised me not to do it then, giving his reasons, which were sufficient to lead me not to do it at that time; and I had abandoned pretty much all idea of prosecuting it under the circumstances, at that time. I stated that, substantially, to the company, as my reason for not voting for Mr. Finch.

Q. After you had made that statement, did Judge Hubbell make any remark, and what?

A. A number of those present made expressions. I think the remark of Judge Hubbell was, that it was scandalous treatment, and he wanted to know if I was going to let it rest so. I do not recollect exactly the words. I remarked that the reason I had not done any thing about it was, that I did not

what lawyers to apply to, as they would often secretly favor one another. I had known my regular lawyer, but I knew he was favorable to Finch.

Q. Did Judge Hubbell at that time suggest to you what course to take?

A. I think he said that that objection did not lie against you, Mr. Ryan, and I believe he mentioned also Mr. Watkins.

Q. Did he tell you what course to take—not what lawyer—to right yourself?

A. I do not recollect that he advised any thing more than that. He might have said that if those facts were true, the judgment ought to be vacated.

Q. Did he say that positively?

A. I would not be positive, but I have an impression of that kind now.

Q. Was it after that conversation that you caused the motion to be made?

A. It was a very few days after.

Q. For what purpose did Judge Hubbell suggest Mr. Watkins' name and my own to you?

A. I took it to be that you would not favor Finch, as a brother lawyer.

Q. Yes, but for what *purpose* did he mention my name at all—what were we to do?

A. Why, that I could consult with you and see if you could take hold of the suit.

Q. Was it not understood between you and the other persons present that you were to come to Watkins and myself, to get us to make a motion?

A. It was not understood any thing about it.

Mr. KNOWLTON. Mr. Ryan, you had better inquire what did take place, and what Judge Hubbell did say—not what was understood.

Q. Dr. Greves, will you state for what purpose Judge Hubbell referred you to myself and to Mr. Watkins?

A. Well, I could only infer that purpose. That was the remark he made, that the objection I raised did not lie against you two.

Q. Was that said in connection with the advice which Gen. See had given you?

A. I do not recollect that Gen. See gave that as a reason. He gave another reason.

Q. Was it said in connection with your own remark, that you feared any lawyer you might employ would favor Mr. Finch?

A. It was, and followed very soon after.

Cross Examination.—Q. Do you remember whom those gentlemen were who were present at that conversation.

A. I cannot remember. I had been in two or three times before; there were generally three or four in the room. I do not recollect whether Col. Walker was there.

Q. Did this conversation transpire openly and above board.

A. It did. It was a sort of political conversation. The meeting was purely accidental. I had no thought of meeting those who were present, or stating any thing upon the subject, but they were conversing about the election, and I made my statement as a political reason for not voting for Mr. Finch.

Q. A good many hard things had been said on both sides, had there not?

A. Yes, sir, at that sitting there were many hard things said; they were recounting the stories afloat about the candidates. I stated my relation in that connection.—After narrating the facts, the judge said, if I related what was true, it was scandalous.

Q. Was that applicable to the judgment, or to the conduct of Mr. Finch?

A. It was to the conduct of Mr. Finch. After that I think he said, if the facts were true, I ought not to rest under it—that he would not rest under it. It was a general expression, I know, and others said it was scandalous.

Q. Might it not have been some other person who suggested the propriety of moving to have that judgment set aside?

A. It might have been, I cannot recollect. There was some conversation about moving to set it aside, but I cannot recollect what parties said about it.

Q. Will you state now whether the affidavit was drawn by Mr. Ryan.

A. It was, sir.

Q. Was Mr. Ryan present at this conversation at Judge Hubbell's.

A. He was not.

Q. You were frequently in conversing with Judge Hubbell about the political prospects of that campaign.

A. Yes, sir. Not as frequently as others but I was in a number of times.

ANDREW E. ELMORE was called, sworn, and examined on the third specification of article six.

Q. Mr. Elmore, where do you reside?

A. I reside in Mukwanago, Waukesha county.

Q. Do you know Judge Hubbell? A. I have seen him.

Q. Do you know Burr S. Craft? A. Have seen him, also.

Q. Do you recollect a suit in which Burr S. Craft prosecuted his wife for divorce in the Waukesha county circuit court? A. I do.

Q. Do you recollect of having a conversation with Judge Hubbell, prior to that suit, on the subject of Craft and his wife? A. I do.

Q. Will you state when and where it was?

A. It was in March, 1852, at the house of Peter G. Jones, in Waukesha.

Q. Will you now state what that conversation was, how it came about, and all about it, stating it as nearly as you can, from beginning to end?

A. Mr. Craft was about going to California. I had a general power of attorney to transact his business. Most of his property was held in my name. There was a bill which had been filed in the Milwaukee Circuit Court, to foreclose on some lands, upon which I had a claim, although belonging to Craft. A decree had been made in the case. I think the lots were sold and bid off by Mr. Mitchell. It had been arranged between Mr. Arnold and myself, that if I would make no defence, I should have a deed of one of those lots whenever they were sold. I called at Mr. Arnold's room one day to inquire about when I was to have that deed; while there I think Judge Hubbell came in and asked for a cigar; he inquired of me: "Is Mr. Craft going to California?" or something of that kind, and what was the cause of his going. I said he had difficulty with his wife, and had concluded to go to California, to get away from her. Mr. Arnold, Judge Hubbell, and myself, had a general conversation about the matter, in which I gave a somewhat detailed statement of his difficulties with his wife. I mentioned that Craft had tried to get a divorce from Judge Stowe, and failed; she was then the applicant; I think Judge Hubbell said that Craft did not make the right application, or something of that kind, or he would have obtained the divorce. I think I stated what were Craft's grounds for claiming the divorce.

Q. What led you to state to Judge Hubbell, Craft's grounds?

A. I think, in the first place, that Judge Hubbell remarked, that he was friendly to Craft, that they were Odd Fellows together, and that he was sorry he was going to California. I repeated the trouble between them as being the cause of his going to California. I told him all I knew of the case, as I understood it. I think he said then, if the statement I made was correct, there would be no difficulty about obtaining a divorce. I think he said that, or something equivalent to it.

Q. Did he make any statement or suggestion to you about employing counsel.

A. I think he said, if he had employed Mr. Arnold, he could have obtained a divorce. Mr. Arnold was present during the conversation.

Q. Did you take any action in the matter growing out of that conversation.

A. After I got home, I said to Craft, "I wish you had been with me at Waukesha." I told him I had had a conversation with Judge Hubbell, and afterwards with Mr. Arnold on the subject of his divorce. I told him I thought he could obtain a divorce.—He said he would go up and see about it. I told him I thought it hardly worth while to go.

Q. Was the bill afterwards filed for divorce. A. There was a bill filed.

Q. Did Craft in fact go to California?

A. He did, soon after the bill was filed.

Q. Who acted for Craft in obtaining testimony?

A. I did, Mr. Arnold was his attorney. The testimony was taken by deposition, and I acted in the taking of it for Craft, with the assistance of attorneys.

Q. After that testimony was taken, did you go with the testimony to see Judge Hubbell? A. I did.

Q. Will you state when and where?

A. When I went to Appleton to take testimony, the main witness was absent.—On my return I asked the clerk of the court if he could not open that testimony, so that I could submit it to some one to find out whether it was sufficient. He said the Judge could do it, and no doubt, if I could take it to him, he would open it. The first time I had business down to Milwaukee, I took the testimony with me, still sealed. I saw Judge Hubbell at the United States Hotel, immediately after dinner; he invited me into his room; I went, saw Mrs. Hubbell—it was soon after his marriage—we had some general conversation, and then I introduced the subject. I handed Judge Hubbell the papers and told him there was some testimony which I had not yet obtained, and that I did not want to go up there again to get it, if what I had was sufficient. He took the testimony and said in a playful manner, that he would let his wife be judge, and that he thought she would be a hard judge because the application was from a man. I think he read the testimony entirely through. He said the testimony was pretty strong, unopposed, and if there was nothing against it, there were grounds sufficient to grant a divorce. There was a good deal of conversation while we were there. When we were about half through the testimony, Mrs. Hubbell was for deciding the case. He said she would make a poor judge, deciding in that way before she was through the testimony. She seemed to think that Mrs. Craft must be a bad woman. The Judge kept the testimony in his possession. I have never seen it since; I may have seen the paper containing it, but never the testimony.

Q. Were you present at the Waukesha circuit court, when the decree for the divorce of Burr and his wife was rendered? A. I was.

Q. Had you any conversation then with Judge Hubbell?

A. I did. I called upon the clerk and asked him if those papers were there. I then asked Judge Hubbell where they were, and he said they were with some other papers in Milwaukee, but that he would send for them or bring them out. He afterwards went to Milwaukee, and on his return, he said he had them. I then said—"Mr. Arnold is not here, I shall have to send for him." He said I could get some other lawyer to move a decree; which I did. Judge Hubbell presided at that term.

Q. Did you, after the decree, have any conversation with Judge Hubbell in relation to Craft.

A. Yes, sir. I was at the United States Hotel in Milwaukee, saw the Judge, and he invited me to go to his room; I think I went there. I will not swear positively where I met him, but I think it was at the States. We talked about Craft somewhat. I think I met Arnold also; and the subject of the deed I was to have was brought up. Judge Hubbell and myself were talking together, alluding to the decree, and talking about the testimony, Mrs. Hubbell being present; and he remarked to me to tell Craft, when he got to California, to send Mrs. Hubbell a gold ring.

Cross Examination.—Q. Will you state to the Court whether the remark about the ring was made in a playful manner.

A. I understood it in a playful manner.

Q. Did you suppose there was earnestness enough about it, to cause you to write to Craft to do it. A. No, sir.

Q. At the time you say you got Judge Hubbell to look over this testimony, was it for the purpose of having it examined, in order to avoid the necessity of taking other testimony, and was that the object of presenting it to him then.

A. That was the only object.

Q. After his reading of the testimony, did he say that you need not go to the trouble of going to Appleton again.

A. Yes. I think the words he used were, that if there was no rebutting testimony, he would not put me to the trouble of going to Appleton.

Q. Will you state whether, to your knowledge, there was, directly or indirectly, any money paid, or proposed to be paid, to Judge Hubbell in this divorce case of Craft vs. Craft.

A. I do not know that there was. I know of no such thing. I have never paid him any thing, nor proposed to pay him.

Mr. KNOWLTON. I made the inquiry because there was so much outside talk about it.

Direct Examination resumed.—Q. You were asked by the counsel whether any money had been paid, or proposed to be paid, to Judge Hubbell, prior to Craft's going to California; did he state to you any thing upon that subject.

A. He stated that he agreed to give Arnold one hundred dollars, and he believed Arnold and Judge Hubbell were going to divide it.

Mr. KNOWLTON. That is what Craft said.

Q. Who paid Mr. Arnold.

A. I paid him. I gave him my check for the amount I agreed to pay.

Q. An hundred dollars.

A. No, sir. I told him it was not worth that, and I would not pay it. I gave him fifty dollars, and thought it was too much. Craft agreed to give him a

hundred dollars, and I have no doubt he would have agreed to give him a thousand if he could not have got the divorce otherwise. The money was paid to Arnold in a day or two; for I always pay everything when I have the money. Craft was gone to California. I was to pay all his regular debts.

Q. Had Craft provided means to pay Arnold?

A. Not a cent. I have his property in my hands. His property is all in my name, and I am good to pay any demand against him.

Q. Are you distinct in your recollection as to Judge Hubbell's remark about his being an Odd Fellow?

A. I have my doubts whether Judge Hubell made that remark. I know I knew the fact that Judge Hubbell and Craft were Odd Fellows together, and gathered it from some remarks he made in connection with this subject, and his regret that Craft was going to California.

E. MARINER, called, sworn and examined upon the first specification of article seven.

Witness. I reside in Milwaukee; am an attorney at law.

Q. Do you recollect the case of Baasen vs. Anderson, in a matter of foreclosure? A. Yes, sir; I was solicitor in the case.

Q. You were a claimant for Le Fevre? A. Yes, sir.

Q. Was he one of the defendants?

A. Yes, sir. I was present at the sale of the mortgaged premises. Byron Kilbourn became purchaser.

Q. After the sale did you have an interview with Judge Hubbell in regard to confirming that sale?

A. I did, at Mr. Wall's house, where the judge was boarding. I think it was the evening of the day on which the property was sold. I told him there had been a sale of mortgaged premises that day on foreclosure, and that as the rent was some eight or ten dollars a day, it was rather important to get the sale confirmed as soon as possible; and I asked him if he would hold a special session the next morning and confirm the sale. I told him when I asked him, that there was no objection by any party. He said he would. He asked me then who the parties in the case were. I told him that Mr. Kilbourn had purchased the property, and that he had held the title before. Then he said he thought he would not go. Then I told him I did not come there for Kilbourn—there was another gentleman, who for reasons of my own, I would not name, and it was for my own interest and his to have him hold this term; but he said he thought he could not do it, and I came away.

Q. Did he assign any reason, or say any thing about Mr. Kilbourn.

A. He said that was the way things went—the men who were the most anxious to oppose him, were the first to ask favors; that Mr. Kilbourn was always running out against the Jenny Lind Club; that that was foolish, he might as well run out against a singing school, as as against the Jenny Lind Club.

Q. Did Judge Hubbell make any remark to you when you stated to him that it would be an advantage to you.

A. Yes, sir; he said he could not help it; I ought not to work for such a man.

Q. Who was the person whose name you told Judge Hubbell you did not feel at liberty to mention. A. Amos Sawyer.

Q. Did you communicate to Col. Sawyer, Judge Hubbell's declining to hold a special term. A. I did.

Q. Did you learn that day, in any way, that Judge Hubbell would hold a special term the next day. A. I understood so from Col. Sawyer.

Q. Was a special term, in fact, held the next morning.

A. The Court was opened, some other business was done that day, and the sale was not confirmed. The Court adjourned till the next day, and I think it was not confirmed even the next day. There was another special term held on the following day; the judge stopped on his way down and I asked him to hold one on the following day; he did so, and the report of the sale was confirmed.

Q. On the first occasion did you have any conversation with him in relation to his refusal to hold a special term to confirm the sale?

A. We walked together down town and he spoke of his refusal to me; he said he did not know at that time for whom I appeared. I told him I did not feel authorized to tell him. He said he had no objection to holding special terms, for people who did not take every opportunity to run out against him; and spoke of Mr. Kilbourn's running out about the Jenny Lind Club, again in about the same terms as before. I told him that I considered it as a matter of favor to myself, and that I should not have gone to him and asked him to hold a special term for Mr. Kilbourn.

Q. What was the connection of Col. Sawyer with the matter.

A. Mr. Sanderson had leased the mill. It was run till this foreclosure sale. Mr. Sawyer wanted to get a lease of the premises, and did not want Mr. Sanderson to know that he was going to get it. Mr. Kilbourn did not want to make any arrangement till the report of sale was confirmed. He was not a party to the suit. He wanted to get a lease and possession of the mills, from Mr. Kilbourn.

Q. The connection of Mr. Sawyer is, that he wanted to get possession and get a lease, you say; do you know whether he had the promise of getting a lease.

A. Mr. Kilbourn had told him, I think, that he should have the mill. I do not know when he did get possession, or when he did get a lease, but it was shortly afterwards. Sanderson had possession of the property under a lease, which expired at the sale. I do not know that he had a written lease; I only know what Mr. Sanderson told me about it.

Q. Had he to pay by the day, month, or by the year; or had the premises for an indefinite time, for an indefinite sum in gross.

A. I do not know upon what terms he did have them. It is my impression, from subsequent conversation, as to the writ, that Mr. Sanderson paid by the month. The confirmation of the sale cut off the right of possession by Sanderson, and terminated his term, I think. Mr. Sanderson held under a lease from Mr. Kilbourn.

Q. What Sanderson was that. A. The one who has been witness here.

Mr. FINCH recalled to the second specification of article seven.

Q. Do you recollect the pendency of an indictment against William H. Howe for perjury in the Waukesha county Circuit court. A. Yes, sir.

Q. Were you at that court the term that indictment was tried.

A. I was there when it was called for trial. I do not know as I was in when it was on—in fact I know I was not.

Q. Were you at that term of the court present at any interview between Judge Hubbell and Howe's wife. A. I was.

Q. Will you state to the Court in detail how you came to see them, and where you saw them, and what took place, and what conversation upon the subject.

A. My statement might involve some matters, perhaps, which would not be relevant. I arrived at Waukesha on Monday afternoon, about four o'clock; the hotel was full, and I could not get a room. I was desirous of filing some motions at a certain hour the next morning. I went to Mr. Holliday, and asked if I could occupy his room to do my writing in, and he said I could in about an hour, or half an hour. I went to the court house and got my satchel, and came back, and he said—

Mr. Arnold. Don't tell what Mr. Holliday said. He is dead, you know, and we don't want any of his conversations.

Witness. I cannot very well tell my story without that. I said in the beginning that my statement might involve irrelevant matters. I got the privilege of going to Mr. Holliday's room to do my writing. I supposed there was no one there. I went through the hall, opened the door, stepped in, and there I saw Judge Hubbell and Mrs. Howe. There was a bed in the opposite corner of the room. As I threw the door open I saw Mrs. Howe sitting on the bed, and Judge Hubbell approaching the door. He requested me to walk in; I drew the door to, and went back, declined to go in, and went down to the bar-room.

Q. Was there any place upon the bed on which Mrs. Howe was sitting, depressed as if some one else had been sitting there.

A. It had the appearance on the left side of her as if some one had been sitting there. I staid there that night and slept in the same bed.

Q. From what direction was Judge Hubbell coming when you opened the door.

A. He was walking from that side of the room—from towards the bed, and must have been coming from the bed to the door. I did not see him on the bed at all.

Q. When you entered the room and saw Mrs. Howe, was she self-possessed and cool, or was she agitated and confused.

A. I thought she appeared confused, her face was a little suffused.

Q Were there any chairs in the room. A. Yes, sir.

Q. Did you afterwards have any conversation on the subject of that interview with Judge Hubbell.

A. I did, Sir, or he had with me. After this occurrence, I was in the judge's room, and there were several other gentlemen, members of the bar, and among them Mr. Arnold, A. D. Smith, Mr. Randall of Waukesha, present, and while we were all sitting there—all but Smith were there—Smith came in and rallied the judge in relation to his having been with Mrs. Howe, and as there had been a difficulty between the judge and myself, I felt as though he might have related what I saw for the purpose of getting up a story. I waited till all the gentlemen had left, and then told him that I had said nothing to any one about it; he said then it was of no consequence, because nothing had passed between them in the room at all improper; that he had met her by appointment, and that she had been bothering him about the trial of her husband for perjury, and he had agreed to meet her there and talk with her about it.

The Court adjourned till 3 o'clock P. M.

Mr. FINCH continued.

Q. When the adjournment took place, had you stated the whole conversation with Judge Hubbell of which you were testifying.

A. I do not think of any thing else, sir.

Q. Was that interview to which you have testified, previous to the indictment against Howe. A. It was, sir.

Cross Examination.—Q. At the time you speak of going into that room, was Judge Hubbell holding Court in Waukesha.

A. Yes, sir; it was the first day of term. Judge Hubbell' room was next door to Mr. Holliday's.

Q. Did you go entirely into the room before you commenced excusing yourself, and turning to go back; or had you opened the door only enough to see who were there.

A. As I threw the door open, I stepped in, perhaps one step, and kept my hand upon the knob of the door.

Q. Did Judge Hubbell say—"Come back, there is nothing private here."

A. I think he said something like that. I declined going back upon that solicitation.

Q. After you got out of the room, he came to the door and insisted upon your coming in. A. Yes, sir.

Q. After you went out, how long was it before you again saw Judge Hubbell.

A. Not a great while after; he came down into the bar-room—it might have been five, ten, or fifteen minutes.

Q. How long was it after this occurrence in the room, that Mr. Holliday and others with you, commenced laughing at Judge Hubbell in relation to his interview with Mrs. Howe.

A. When the Judge came down, he stopped a few minutes in the bar-room, and I think he invited me to go to his room. I wanted a room to do some writing, and he invited me to step into his room, saying I could write there, and I did. While there writing, Mr. Holliday and, I think, Mr. Arnold and Mr. Randall came in. It was the same evening—it was 4 o'clock when I got into town. It was in the fall, I do not remember which month; at any rate it was nearly dark when I went up to the room. Mr. Holliday told me he would see that the room was prepared with a candle. This was at a public house.

Q. Had you seen any thing of Mrs. Howe previously about the house.

A. No, sir; I was not aware that she was about.

Q. Well, after Mr. Holliday and the other gentlemen left the room, you staid behind to have a conversation.

A. Yes. I wish to be understood as stopping to exculpate myself from any suspicion of relating what I saw. Owing to a variance which had existed, I was suspicious he would think I had gone below and told the members of the bar what I had seen; so I broached it myself to him, and said I hoped he would not suppose I had made that statement.

Q. Did he tell you there was nothing private.

A. I do not wish to be understood as stating definitely the language which Judge Hubbell used. I give it according to my recollection. Judge Hubbell had some conversation with me after the court adjourned this morning upon

that point, and asked me if I did not recollect that it was through his invitation that I went into the room; I am inclined to think that it was quite possible, and more than probable, that Judge Hubbell did state to me, that Mr. Holliday had promised him to go into the room to meet her. I have no recollection his making that distinct statement to me—it is a mere matter of impression.

Q. In your direct examination, you spoke of some conversation passing between you and Judge Hubbell, in which he stated that he had made an appointment to meet her there—can you swear positively, that that was the language used by Judge Hubbell.

A. I cannot state positively the language Judge Hubbell used to me; it is a long time since; but according to the best of my recollection, he stated to me that he consented to meet her there.

Q. Might you not be mistaken in relation to that—to his meeting her there pursuant to an arrangement made by Holliday.

A. It is quite possible that I might be mistaken.

Q. I believe you stated that something was dropped by Judge Hubbell, that this woman had been bothering him about some civil suit, and that he could not see that he had done injustice.

A. It was this, near as I can recollect, that Howe, her husband, had a civil suit in which a judgment and verdict had been rendered against him; also that Howe was indicted for perjury, and that Mrs. Howe had given him a good deal of perplexity, and wanted to see him and talk with him about that matter.

Q. Do you recollect his saying any thing about her writing him letters.

A. No, sir, I do not recollect that. He did not state that it was by letters, but that she bothered and perplexed him, and stated that he could not see that he had committed any error, but she thought otherwise.

Direct Examination resumed.—Q. Was Mr. Holliday one of the defendant's attorneys on the indictment. A. Yes, sir, I understood him to be.

Mr. KNOWLTON. I wished to question Mr. Finch in relation to a matter he testified to the other day—something upon the foreclosure suit of William Y. Miller, against Joseph O. Humble, in which you were the solicitor of the plaintiff, I believe. A. Yes, sir.

Q. You also testified about being retained in the case of a promissory note.

A. Yes, sir.

Q. Up to the passing of that foreclosure decree, were you conscious of Judge Hubbell's interest in the case of Graham vs. Humble.

A. I knew nothing about it except what was stated by Judge Hubbell in court. All that I understood him to say was, that he did not know but that he had some interest in it, and could not try it.

Q. During that suit, did you intimate to him that you supposed there was any impropriety in trying it before him.

A. The question never occurred to me in the foreclosure suit, at all. I took my decree and advertised the sale. I made Mr. Graham a party because he was a judgment creditor.

Q. Did Mr. Graham appear in that suit; or was the bill taken as confessed?

A. It was taken as confessed; Mr. Downer was the only man who answered.

Q. After the decree of foreclosing was entered, do you recollect having any conversation with Judge Hubbell in relation to the propriety of his endeavoring to try to bid off the premises in order to save something upon this judgment?

A. I do not recollect that the question of propriety was raised.

Q. Well, did any conversation occur about taking that course?

A. A few days before the sale, Judge Hubbell called on me, and wanted to know the amount of my claim upon it, and if there could be any time upon it. I told him there could not; my client must have his money. He then said something about bidding it off himself.

Q. Do you remember some conversation with Judge Hubbell about something peculiar in the mortgage?

A. I do not remember about that. So far as my experience goes of foreclosure, I always took my decrees at my peril, and I supposed other lawyers did the same. I always presented them in open Court, and had my affidavit of computation made up and sworn to in open Court, and always understood that I took it at my peril if there was any thing wrong about it.

Mr. President, I wish to make a very brief statement in relation to a matter in which I am involved before this Court; and I shall make it brief. It is in reference to an affidavit of J. P. Greves, which is among the papers of this case, and has been read before this Court, and will be read throughout this Union. In that affidavit there is a direct attack made upon me, against which I cannot defend myself, unless I can do it here. That affidavit purports to have been made for the purpose of setting aside a judgment entered up against Abel W. Wright and James P. Greves, in the Milwaukee county Circuit Court. That affidavit upon its face is what a lawyer would call a *felo de se*; its parts are inconsistent with themselves, and destroy unquestionably its effect upon me. The next day after that affidavit was made, it was published, and it served its purpose in traveling over this judicial circut. I shall not take up the time of this Court to make a lengthy vindication of my private or professional character; but I wish to state here under the solemnities of an oath, and in the presence of a higher tribunal than this, that that affidavit is false from begining to end, false in substance and false in fact; and I stated to the affiant at the time of its publication, in company with several gentlemen, that he was a perjured scoundrel and he knew it, and he had not the courage to resent the insult, nor attempt to indemnify himself by a suit at law. With these remarks and the profert which the gentleman made of himself in Court, I submit the matter—thanking this honorable Court for their indulgence to me in making this statement, which I think was only my due.

ALEXANDER COOK was called, sworn and examined to the same specification.

Witness. I reside at Waukesha; am an attorney at law.

Q. Were you in 1851, district attorney of Waukesha county? A. I was.

Q. Were you present at the trial of William H. Howe in the Circuit Court, on an indictment for perjury?

A. I was; I prosecuted that trial as district attorney.

Q. Will you state to the Court what the evidence on trial and ruling of the Court was upon the assignment in perjury?

A. My present impression is, that there was no evidence upon that subject.

Q. Will you state what evidence was offered, and what the ruling of the Court was upon it?

A. We offered to show by the witness upon the stand, the same morning that we had shown what the testimony of Howe was, that the note mentioned in the indictment had formerly been attached to a part of another paper, which other paper contained a contract, which question was objected to on the part of

the defence, for the reason that we did not produce that other paper. The ruling of the Court was, that the evidence was not admissible till the other evidence was produced.

Q. Will you state how the other papers, the note and contract were connected together? A. They were drawn on one piece of paper.

Q. Was any farther proof made on the part of the prosecution on that point.

A. I think I stated to the Court that we had a duplicate of that contract which we would offer in proof; I will not be positive though, upon that point.

Q. Was there any offer to show the loss of the contract, which had been attached to the note? A. No, sir; that could not be done.

Q. Were you present in the civil suit in which the perjury was alleged to be committed? A. I was, but I was not counsel in that case.

Q. How did the question of the notes having been attached to the contract arise on the civil suit. A. I did not understand the question.

Mr. RYAN read from the indictment as follows:

"The alleged perjury on that point is, that Howe was questioned also as to whether there was ever a contract connected with the last mentioned note, and did then and there, on such a day, &c., town, &c., swear, affirm and give evidence, among other things that he had no knowledge as to whether there was ever a contract connected with a note as aforesaid."

Q. How did the question upon which that assignment of perjury is based, arise upon the trial of the civil suit?

A. That fact was admitted to be shown by Howe, the witness on the part of the plaintiff.

Q. I understand so much by the indictment, but how was that involved in the civil suit—whether that note ever had a contract attached to it?

A. It was so set up in the pleadings.

Judge HUBBELL. I can state that whole case, if you desire it.

Mr. RYAN. I think I can get the testimony from the witness; at any rate I can try.

Q. How did that note become a material question on the suit?

A. I cannot answer that question from any thing I recollect of any thing that took place in the trial of that cause. I can answer it from what I know of the history of the case, but not from any thing I know as having transpired on the trial of that cause.

Q. Was the contract which was alleged to have been attached to the note, a contract which you offered as evidence of the contract attached to the note—were they duplicates of the same contract? A. Yes, sir.

Q. And your offer of proof was to prove that a duplicate of the contract which you offered had been written upon the same piece of paper with the note?

A. Yes, sir.

Q. Was the effect of that contract to qualify the note?

Mr. KNOWLTON. I think you are not qualified to prove that by parole.

Q. Was that testimony—the offer of the prosecution—so ruled out?

A. Yes, sir.

Mr. ORTON recalled to the seventh specification of article seven.

Q Do you recollect an action for replevin in the Circuit Court of Milwaukee county, of Hopkins *vs.* Stevens?

A. I do. I was assistant counsel for the defendant with Judge Chandler in that case.

Q. Do you recollect any controversy in regard to an admission of fact by Mr. Watkins on that trial? A. Yes, sir.

Q. Will you state all that took place, from beginning to end, on the subject of that admission of fact.

A. I cannot recollect so as to state what the fact was precisely. I can only state what it was concerning. It was concerning the justness or reasonableness of a bill of freight, charged by complainant as ware-houseman on the pier. I think the admission was, that the bill was a reasonable and just bill of freight. The admission was made by Mr. Watkins, who was the counsel or plaintiff's attorney in the suit. I do not distinctly recollect how the question arose afterwards, but my impression is, that it was by argument to the jury, that this fact was urged to the jury as being in fact a vital one to the case. I think Judge Hubbell checked the counsel in his argument, and questioned that any such admission had been made. I thought he did not understand that it had been made. It was still insisted on that Mr. Watkins had admitted the fact that the bill was a reasonable one. Judge Hubbell remarked in the same language, I think, that I now repeat—"I shall not allow you to make that admission—If you do you will be beat." Mr. Watkins replied—"I do make it, and I will run the risk," or something to that effect.

Cross Examination.—Q. Is your recollection in relation to the conversation that passed, and the remark made by Judge Hubbell distinct.

A. Yes, sir; as to that remark, it is quite distinct.

Q. Did he couple that remark with any thing else.

A. I believe that was about all that was said.

Q. Do you remember that he said, if he admitted that, he admitted away his case.

A. I think he used just the language I used. I put it down the same day, and made a memorandum of it. The fact stood as admitted, and was so submitted to the jury.

Q. What was the issue in that case.

A. I do not recollect. I was called into the case after the suit came on for trial, as an assistant simply. I am inclined to think that there must have been some special plea, inasmuch as the defendant insisted upon a lien upon the goods for freight, but I do not recollect the state of the pleadings. The plaintiff's attorney had admitted that the bill which he had charged upon the goods, was a reasonable bill. The defendant had made a tender but not the amount of the bill charged. This action of replevin was brought to recover certain goods that had been in charge of defendant as warehouse-man, and it was claimed that a sufficient amount had been tendered to entitle him to a delivery of the goods.

Q. Do you remember in that case that there was evidence in relation to a tender made by the complainant, either in gold or silver; and were the facts proved in relation to that tender.

A. I think the evidence was something to this effect, that the money was tendered to a son, clerk of Mr. Stevens. I think the money was taken and put into the drawer, accompanied with the remark, either at the time or soon after, that he would give him credit upon his bill.

Q. Do you remember that that evidence was made by a clerk of the defendant. A. Yes, sir. The money was put into the drawer, I think.

Q. Do you remember that the money was laid down upon the counter, and the clerk scraped it into a drawer and said he would credit it upon account. It was insisted, upon their own admission upon the bill, that they had admitted it to be reasonable and just.

Direct Examination resumed.—Q. You say you omitted to prove it, because Mr. Watkins, when you proposed to prove it, admitted it.

A. Yes, sir, and I urged it upon the jury as a fact admitted, and it went to the jury as a fact admitted.

Judge Chandler recalled to the same specification.

Q. Do you recollect the replevin case of Hopkins vs. Stevens. A. I do.

Q. What was your professional connection with that case.

A. I was attorney for the defendant, Mr. Stevens.

Q. Will you state whether there was any controversy, and what it was, during the progress of that trial, in regard to an admission of fact made by the plaintiff's attorney.

A. I do not recollect distinctly, but so far as I do, it was this—there was a witness who was sworn by him to establish the facts relative to tenery which was spoken of by the witness. He introduced a clerk of Mr. Stevens, who it appears was the only witness present except Mr. Stevens himself, at the time the tenery was offered at his office. He contradicted, utterly and totally, the statement of this young man. He contradicted the statement which the clerk of the plaintiff had made, in regard to the form and manner of the tender of that money. In that there was an issue between the witnesses in fact. Out of Court, however, there had been taken the testimony of Mr. Stevens' son, who at the time of the transaction was a clerk in his office, and that testimony was not read; but it had been seen by the attorney for Hopkins. I stated that evidence as a make weight to overcome the evidence given by the witness of Hopkins. Upon the statement of it, Mr. Watkins not requiring the reason, the paper itself was not read, but the statement I had made was admitted to be a fact so far as Stevens was concerned. The fact admitted by Mr. Watkins, the fact stated in that paper, went to establish the correctness of the bill which was charged against the goods which had been shipped from Philadelphia to Mr. Stevens, and the charges which he had paid to the transporter to Milwaukee, and the storage of them, which was alleged to have been some two or three years in the ware-house of Mr. Stevens, that was in the paper evidence. He admitted that and whatever else there was contained in it.

Q. Did any controversy arise afterwards touching that admission.

A. Yes, sir. The cause was summed up by Mr. Watkins on the one side, and by Mr. Orton and myself upon the other. No allusion was made by the Judge, in his charge to the jury, at all touching this collateral evidence; and after the Judge had closed his charge to the jury, and was about to sit down, I reminded him of the fact that he had not alluded to the fact of the collateral evidence of which I have spoken, and I desired him to do so, as we thought that that evidence had a controlling weight to give the balance of power upon our side. When I made that request, the Judge said he did not understand the admission as in the terms I had stated it. I remarked that Mr. Watkins, who was attorney for the plaintiff, was there, and I would appeal to him to know if I had stated the admission correctly. I then made the request of Mr. Watkins to say whether it was so or not. The reply of Mr. Watkins was—

"I have admitted it as you have stated it, and I do now admit it." To which the Judge replied, still standing in his place—"Mr. Watkins, I cannot allow you to make that admission, for if you do you will be beaten." Mr. Watkins then stated—"I have admitted it, and I do now admit it." The Judge then replied again—"If you do, you will be beaten." Judge Hubbell then resumed his charge to the jury, the particulars of which I am totally unable to state; and upon that additional charge, the jury retired, and a verdict was found for the plaintiff in the suit.

Cross Examination.—Q. Did either party except to the instruction of the Court upon that matter, in relation to the admission which was contained in that paper.

A. I stated that Mr. Watkins did not except to the charge of Judge Hubbell; I did, thus far.

Q. Then after the attention of the court had been called to it, how was it.

A. He then went on and made further remarks, but I could not recall the character of those remarks.

Q. That is what I want to get at—whether you or Mr. Watkins took any exception to his charge to the jury.

A. Not to my recollection. I thought so, but I did not except; I had instructions from Mr. Stevens not to do so.

Q. I wish to inquire whether either of you moved the court for a new trial, for any cause soever.

A. Mr. Watkins did not desire a new trial, he had a verdict.

Mr. ARNOLD. Well, I have known verdicts where a new trial was desirable.

Q. Was this admission, in this paper, made to the jury by yourselves, or was it a subject matter of evidence before the jury?

A. It was commented upon, if not by Mr. Orton, at least by me. The evidence was stated and admitted by Mr. Watkins, in the face of the jury and in the presence of the Court, but no question was raised to the Court at the time. I am not certain that it was read, but the contents were stated, because I held the paper in my hand, and Mr. Watkins admitted that I stated it correctly, and admitted the facts of it. It was taken before the proper officer.

Direct Examination resumed—Q. Was the admission made by Mr. Watkins in open Court, and in hearing of the Judge.

A. It was in open Court in response to my statement, in the presence of the Court and before the jury.

Q. Was it made in a tone of voice sufficiently audible.

A. It was made in the same way that I would call out evidence from a witness.

Q. State as nearly as you can the language of Mr. Watkins when he made the admission.

A. The substance of it is, that he admitted to be true, for the purposes of that trial, the evidence that was contained in that deposition, and my statement of it was true. He did not require it to be read, but let it pass for what I had stated it to be.

Q. Was the deposition of which you speak, the deposition of George C. Stevens?

A. I think so, sir. (Witness was handed a paper.) I have no doubt that is the deposition.

Q. You have stated, in answer to Mr. Knowlton, that you neither took an exception to the charge of the judge, nor movedfor a new trial—will you state why you did not do either.

A. Yes, I can state the reason why I did not. The reason was this—Mr. Stevens had been long out of health, and was about to leave Milwaukee to go to Long Island; at this time he was gone from home, and previous to going there was this suit and another in which he was a party, and talking with him about this suit, which I knew would come on previous to his probable return, he had given me instructions. I asked him in case it should go against him, what course I should pursue. He stated that he was going away; he did not think he should live long, and he did not wish any annoyance to be left behind him. He approved of my course, and on his return decided not to take any step to restore the cause to a farther inquiry.

Mr. KNOWLTON. Did he give you any direction before he left to take no exceptions to any ruling in Court, or whatever way it resulted, to merely let it go.

A. That was the substance of it, as he did not want any annoyance, and that is mainly the reason why I took no exceptions. I could have moved for a new trial upon a separate procedure. I was not prepared to say that there was not any good and valid ground for taking exceptions. I do not think a question arose from which I could have taken exceptions, except the occurrence of which I have spoken; and in reference to that, it being rather novel, I was somewhat at a loss; but I had no intention of taking any exceptions under the general instruction Mr. Stevens had given me.

Senator DUNN. Did the Court positively exclude from the consideration of the jury, the admission of facts made by the attorney, Mr. Watkins.

A. I am not aware but that in the subsequent charge to the jury he may have said something of it, but I have not a recollection, if he did, what it was that he said. I am not entirely certain, when I called upon him to remind him that he had not referred to the paper evidence, that he was through with his charge, but I supposed he was. He did subsequently to that, continue to charge the jury. It was upon the supposition that he was through, that I reminded him of the omission, or I should not have interrupted him. I am unable to say from reflection now, whether in the subsequent charge, that topic was referred to or not—it might have been, and it might not have been. It was a matter which created in my mind a little confusion, a little solicitude, and I was not so attentive to the subsequent remarks of the Judge, as to remember their import.

Senator WAKELEY. Was any evidence, except the deposition, given as to whether the charges were reasonable or unreasonable.

A. There was, as I stated before, but I could not tell the name of the witness; he was a clerk, and for a long time before and afterwards was his clerk. The clerk of Mr. Hopkins was sworn, and the clerk of Mr. Stevens. This clerk corroborated the evidence made in this deposition, of the justness of the charges made against these goods.

Mr. RYAN read the declaration of the case in reference to the unjust detention of the goods.

JASON DOWNER recalled to the fourth specification of article seven.

Q. In the suit of which a transcript has been read, Barker vs. Pratt, were you the plaintiff's attorney? A. I was.

Q. Had you any notice of a motion to stay the execution on the judgment rendered in that case?

A. I had no formal notice, but at the time the motion was entered, there was a question about rendering the execution.—When that case came on for trial, there was an attempt to get in some defence—a transcript in the record from Vermont, and another transcript on the part of the defendant. The latter was fuller than that on the part of this record, and it was contended on the part of the defence, that there was some mistake upon the record. It was dated 1835, when it should have been 1845, and there was some attempt to go into a defence of that kind to inspect the record and show something wrong. I remarked that if it so appeared, the court of Vermont had jurisdiction, and could, of course, correct the error, and, after some conversation, the Court said it would take the papers keep them till the next term, and look at them. I then remarked that I saw nothing to justify such a course as that; I saw no difference of authorities; there might be no difference about the judgment until it was set aside in other courts. I further showed that the vouchers were given in 1845 instead of 1835, probably a mistake in making out the account; and however the errors might be the Court could correct them, and there was no reason for detaining the papers. The Court then remarked if he gave judgment then he would have to stay the execution. I remarked that I had much rather have the judgment with the stay of execution, than not to have it at all. The next morning judgment was rendered: the Judge remarked thereupon, that he should have to stay the execution for the time the judgment was rendered. I then remarked that I could not consent to a stay of execution. I saw no reason for it. I had the costs attached and went home myself, but I supposed there would be a stay of execution.

Q. When did you first hear of the order staying execution of the judgment.

A. I cannot tell. I recollect that I was back there that term. I went home, staid a day or two, and returned again. On returning, I inquired of the clerk if the order had been entered. I think I did not hear of it until after the Court had adjourned. I had no notice served upon me of a stay of execution, or, at least, I have no recollection that I had. I am inclined to think that there was no written motion in the case to that effect.

Q. Did you have any subsequent conversation with Judge Hubbell touching that order staying execution.

A. I did; but I cannot state the time precisely when; it was either the first or second day, I think, of the next May term of the Circuit Court of Milwaukee county, or on a day previous to that when the Court may have held a special term. After the Court adjourned, while going down from the court house, I had some conversation with the Judge. I inquired of him if there was entered in the case an order staying execution. He said he did not think or know as there was really any good reason for a stay of execution; but that he knew that Pratt—or, perhaps, he used the phrase, "the Pratts"—was hard up and embarrassed, and had a large sum of money to pay in the suit of Ayres, and if execution was drawn at that time it might embarrass him more. I then remarked that the execution would have to be stayed until the next November term. He stated that he thought not, and that after a delay of a few months, if there were no proceedings taken in Vermont to set aside the motion there, a motion might be made at chambers to vacate the order staying the execution.

Cross Examination.—Q. In the conversation that you have just alluded to as your having had with Judge Hubbell, do you remember of his remarking to you, that there was a doubt whether the record produced was sufficient to authorize a judgment; but, at all events, as Pratt had a good farm it would be perfectly secure to you.

A. I do not recollect the remark, that he had any doubt about the sufficiency of the record at all; but he did remember, either at that court or at a subsequent one, that he supposed the judgment was secure by lien on real estate, and that no injury would probably be done. I suggested that there was no motion to be made except in open Court. He said he thought it might be made in vacation at chambers; and after a delay of two or three months, if there were no proceedings in Vermont, then, on motion in chambers, it could be set aside. I accordingly made such a motion at chambers in Milwaukee, but Judge Hubbell was absent at the time, and nothing resulted from it.

Q. Did you subsequently bring an action on that judgment in the District Court of the United States after the refusal to vacate that order. As I understand, a motion was made to vacate the order and was overruled. After Judge Hubbell made the order staying execution, did you apply to the Supreme Court for a mandamus to compel him to set aside that order,

A. Not at that November term, but the year after. I drew an order setting forth the petition and served him with notice. It was after the term at Waukesha had adjourned. Soon after I served him with notice that I should apply for a peremptory mandamus on a certain day. I filed the petition, but the Judge thought there should have been an alternate mandamus, and he made objection to its being taken up. The Court took the papers, at all events, and I left the next morning; but it does not appear from the record that any thing was ever done. I supposed they considered the proceeding not exactly with their practice. The matter was submitted whether it was in order to move for a peremptory mandamus. I submitted it myself.

Q. Did you present the matter to the consideration of the Supreme Court?

A. I presented the petition. I think I stated some things about it in the notice. There was no argument upon the question whether we should have a mandamus; but the question was simply whether it was in order to apply for a peremptory mandamus, and Judge Hubbell said it could not be expected that he could make his return then, and intimated that he should want further time. I am not aware that it has yet been decided in the Supreme Court. I moved for a peremptory mandamus, and I have never moved the Supreme Court in that matter since I submitted it. I do not know whether it was subsequent to so submitting it or prior, that I commenced action in the United States Court. I brought it upon the judgment in Vermont and the judgment in Waukesha. The case is still pending. It has been continued one term upon the application of the defendant. It was continued last spring term. I think it was brought in the June term. It was continued as a matter of course at the June term, because the issue was formed 20 days before the term, and then in the April term, it was continued on the application of the defendant. It was continued at the last special term, I think; it was brought in the January term; it was continued as a matter of course at the January term, because the issue was not formed 20 days before the term; and then in April, it was continued on the application of the defendant.

Q. Do you recollect whether at the November term of the Waukesha Circuit Court, at which Judge Hubbell refused to set aside the order to stay farther proceedings in that case, any evidence or affidavit of any kind was brought by you to set aside that order?

A. There was an affidavit. I think that was the affidavit. (Looking at a paper.)

Q. Who was the owner of this Vermont judgment, at the time you commenced action upon it?

A. I do not know. Chester Baxter and Solomon Downer were owners; they purchased it of Robert Barker. I knowing of how much they paid for that judgment. I do not know whether they took it upon risks. I do not know whether it was assigned without warranty as to its validity, by the assignors to the assignees. I know of nothing of the kind. The idea which I had of the matter was, that Barker had failed and that they took the judgment, but of that I had no certain information. This Solomon Downer was my father. I brought this action for his benefit and for Baxter. At the time I received it, a letter accompanied it without saying to whom it belonged, simply wishing me to collect; subsequently Baxter was here and told me it belonged to them jointly.

Court adjourned till 9 o'clock to-morrow morning.

THIRTEENTH DAY.

TUESDAY, June 21.

MORNING SESSION.

LA FAYETTE KELLOGG recalled to specification eight, article seven.

Witness. This, (presenting a book and papers,) is the book of records in the supreme court; and these are the papers in the case of Hungerford vs. Cushing, pending in the circuit court of Dane county, and pending in the supreme court by appeal.

The papers were admitted. The existence of the suit was admitted by the defence.

A. HYATT SMITH was called, sworn and examined on the eighth specification of article seven.

Witness. I reside in Janesville, Rock county; my profession was formerly a lawyer.

Q. Do you know the case of Hungerford vs. Cushing?

A. I do, sir. I was the counsel for one or more of the defendants, and I believe drew the answers as they are now on file.

Q. Do you recollect the time when the decree was made by the circuit court of Dane county? A. I do, sir; it was in the month of June, 1851.

Q. Will you state to the court how that term came to be had, and as much as you know about the holding of that court and the making of that decree?

A. Some time in the month of May previous, I received a notice from Mr. Knapp, as one of solicitors for the complainant, that a special term would be holden at the June or July term in the supreme court in which that cause would be brought on. I consequently informed my clients of the fact, and Mr. Rantoul and Mr. Green came on here to defend the suit. We waited here

as near as I can recollect, about a fortnight for the hearing of the case; nothing, however, was done in the matter, and finally Mr. Rantoul and Mr. Green left for the East, having received information that the cause would not be heard. I returned to Janesville and made preparations to leave for New York, and on the 22d of July, I received a telegraphic despatch from Judge Hubbell, saying that I must return to Madison and argue that case. I did return, and at that time I found Mr. Hungerford, the complainant, here; when I left he was not here. I then endeavored to get the cause put over to the fall term, arguing that there would be no time lost by it, as the cause must go to the Supreme Court; but the argument was insisted on, and during the conversation which I had with Judge Hubbell on that subject, I stated that it would take a week to argue that case. The remark he made in reply, was, that he would not hear an argument in the case exceeding an hour. I remarked that I would not a gue the case, then at all, and I entered into stipulation to submit the case without argument; and on the 25th of July, a decree was made which changed the property in controversy from my client to the complainant, Mr. Hungerford.

Q. Mr. Smith, what time would it reasonably take to read the papers in that cause?

A. I should think no man, being occupied during the ordinary hours of labor, could read them through in less than three days, taking the bills and answers without the proofs.

Q. Was that special term actually held during the session of the Supreme Court?

A. I think it was; my impression is that it was about the time of the adjournment.

Q. At the time the special term was held, I did not know there was a formal term held. After I made up my mind that I could not argue the case, I signed a stipulation, which I believe was placed on file. On the same day I left for home, and the next day, which I think was the 25th of July, I left for New York. I know nothing of the date of the decree except from the decree itself.

Cross Examination.—Q. Where were you when you had the conversation in relation to the time it would take to argue the cause?

A. My impression is, it was in Judge Hubbell's room in the United States Hotel.

Q. Do you remember that whilst you were in town here, either before you left or after you returned, that you were before him in Court?

A. I do not recollect positively, do not think I was.

Q. Do you recollect of being in the Supreme Court clerk's office?

A. I recollect of being in that room at one time before Judge Hubbell, when I filed Mr. Rantoul's answer. I think Mr. Dunn was there opposing the filing. That is the only time I recollect of being there before Judge Hubbell. All I recollect about this conversation transpired in the U. S. Hotel, where for a number of days we talked the matter over, sometimes in the presence of counsel and some times without. It was the subject of conversation at various times throughout the term.

Q. Do you recollect of saying any thing to me (Mr. Knowlton) that he would not hear a lengthy argument. A. I do not.

Q. Let me see if I cannot bring your mind to it. Do you not recollect a

conversation between you and me, to this effect that we had already discussed the whole merits of that bill?

A. No, sir; at least I never could have said so because the fact did not exist. I am perfectly certain no conversation of that kind could have taken place, because the fact was not so. We had discussed a few exceptions to the answer of Caleb Cushing, before Judge Hubbell in that part of the bill, and the answer to it which I myself always regarded as immaterial to the issue. Before I came to that part of the bill, that I considered material, I abandoned the answer myself as insufficient, and agreed to an order that we should answer over again, and the answer which was finally placed on file, never was read in court, and I think there were but few, if any, exceptions taken to it. There were exceptions taken to the answer of Mr. Rantoul, and possibly to that of Mr. Cushing.

Q. Was that bill read for the consideration of the court.

A. The bill, so far as it was referred to in the exceptions to the answer, was read, and the parts of the answer which purported to be the answer to the same parts of the bill were read. My impression is, that there were forty or fifty exceptions filed to the first answer. I know there was a great number of them; the answer was prepared in Boston. I think we took up that answer, and spent an hour or two, or, possibly, half a day, in arguing exceptions. I then abandoned the answer, and submitted to an order to answer over. Then another answer, I think the answer of Harrington and Dexter, a firm in Boston, was taken up. We commenced arguing exceptions upon that; and then, upon the suggestion of Judge Hubbell, that answer was laid aside and left until Cushing's answer had come in. I was not the counsel of that Boston firm, and did not draw their answer; still, I think, we did take that up, and commenced examining the exceptions; but it was laid aside.

Q. Do you recollect of stating on that occasion, that you were not of counsel for Green nor for Dexter.

A. I presume I did. I drew the further answer of Green long after. I was retained in the case by Gen. Cushing, and then by Mr. Rantoul. These were the only persons for whom I ever regarded myself as distinctly retained, though, in some measure, I argued the case for them all.

Q. Do you recollect that your two answers were investigated upon the exceptions?

A. I do not. Mr. Rantoul's answer had not then been filed. It was filed after that.

Q. Do you not recollect that Judge Hubbell decided to over-rule the objections to Mr. Rantoul's answer, as being bad in point of form.

A. I recollect of raising a point of that kind, but I do not now recollect the decision which was made upon it. My impression, however, is, that he did lean to that opinion, and change his opinion afterward, deciding that the exceptions were sufficient, and we went on with it.

Q. You cannot mean Mr. Rantoul's answer.

A. Rantoul's? I thought you said Cushing's answer. It could not have been so with Rantoul's as there were but two exceptions taken to it. One of those exceptions was over-ruled as badly taken, the other exception was held to be good, and well taken. Then I filed an answer as solicitor, which, by stipulation, was taken as an amendment to the answer.

Q. Was not the stipulation which you made upon the exceptions, filed to Cushing's answer.

A. You are right, I think. Won't you let me look at the papers? I might refresh my mind by them, when I cannot otherwise. It is a long time since, and I don't remember distinctly. (The papers were shown to the witness, and then the examination proceeded.)

Q. Can you now state whether the exceptions to Mr. Rantoul's answer were discussed and decided at the same time with those of Mr. Cushing's.

A. I think those exceptions were over-ruled as being bad in point of form. That is my recollection about it on looking at the papers.

Q. Do you recollect at what time those exceptions were argued.

A. My impression is, it was in the fall term previous to the final hearing of the cause. I am wrong; the exceptions you speak of were argued in the spring, and the exceptions to Mr. Cushing's answer were taken up in the fall term. They were argued by Mr. Knapp.

Q. What exceptions were disposed of by you.

A. The exceptions to Mr. Cushing's answer as prepared by myself. My impression is, that you (Mr. Knowlton) were not in court.

Q. Do you not remember that we finally agreed to submit exceptions to the second answer of Mr. Cushing without argument.

A. I do not remember any such thing. I remember distinctly that those exceptions were argued and decided in Court on the argument.

Q. Well, let me call your attention a little farther to the fact, to see whether you do not recollect the fact that they were submitted without argument, and that you wanted subsequently to submit some explanations without making any argument, and that it was done in the front room of the U. S. Hotel.

A. No, sir; I do not recollect any such thing. It was down stairs in this very building. Judge Hubbell was sitting on the bench at the time, and Mr. Collins was arguing the point on the other side.

Q. Are you not mistaken in the point of time when I was present or absent.

A. I think not, but I may be so. I recollect that at the time when this was done, you were not here.

Q. Is your recollection distinct that I was not here at the time of introducing the exceptions to the answer of Mr. Cushing.

A. I have no recollection that you were here.

Q. Have you no recollection of going to Janesville, and then coming back to argue the exceptions. A. I have not.

Q. My recollection is that there was no argument at all.

A. You may be right about that, I have no such recollection. I recollect that the second exceptions were argued in court, and that it all took place on the same day, both the decision and argument. I recollect that the exceptions that were taken were over ruled, with the exception of one that was sustained; and to that I, by agreement of counsel, filed an answer to avoid sending to Massachusetts for Cushing's oath. I sat down and signed the answer, and Mr. Collins signed a stipulation that that was admitted. I think the exceptions were argued at the spring term, because they were filed in January. At the fall term there was an order made to take proofs at St. Croix and various other places. I do not recollect at whose suggestion that order was made.

Q. Was there any thing directed in the order conformably to your wishes in point of time.

A. I do recollect something about that. This is the point that I recollect—

that the proofs should not be required to be taken before a certain time—that they should not be taken before the opening of navigation. That order was made in accordance with my wishes, beyond any doubt.

Q. Was there any thing else done for the purpose of speeding the cause and bringing it to a final hearing.

A. My opinion is that there was a replication filed to all the answers, and I think there was some question raised about it after it was filed, as to whether the exceptions were not waived by it.

Q. Was there also a separate replication filed by Mr. Cushing.

A. I do not recollect. A joint replication was filed, and I claimed that all the exceptions were waived.

Q. Was any thing done in relation to the time the cause should be brought to a final hearing.

A. There was a conversation upon that subject, and to this effect, it strikes me—that we could not possibly get the testimony down from St. Croix in time for the spring term; and that the cause, under an understanding should be heard in the fall, so that it might come up on appeal before the Supreme Court at the winter term of the court. We both supposed we should appeal it.—The following spring term I don't recollect of any thing being done in that case. My impression is, that from some cause or other I did not get here at the spring term, or it was very late if I did. I remember the time from this circumstance—there was a letter written by Mr. Hungerford to my client, saying that I was not there and had abandoned the case, and then he wrote a letter to me charging me with having neglected his business.

Q. At the October term was there any understanding that the case was to be heard in the June or July term following.

A. I do not recollect. I know nothing about the order setting it down for hearing, and do not think there is any such order in the papers. It may be so, but I have never seen it.

Q. Don't you remember that we were present at the hearing of that case in the spring previous to its being heard in July, and that at your request on the part of Mr. Cushing, it was continued till the special term in June or July?

A. There was no special term fixed then. The first notice I had was to attend that special term.

Q. You say that in June or July, you came up here and remained two or three weeks?

A. I did not say two or three weeks.

Q. Do you think it was more than two or three days?

A. I know it was about two weeks. Mr. Rantoul was taken sick here, and he was sick some time. I left here before Mr. Rantoul did. He informed me that the cause would not be argued until fall, as he had been informed, and by his consent I went home.

Q. From whom did he hear that?

A. If you want to know who told him, I can tell you what he said, but I was not present when he was so informed.

Q. Do you recollect of hearing any thing of that kind from the counsel o Hungerford?

A. No, I am certain of this fact, that Mr. Rantoul or Green, stated to me that he had an assurance that the cause would not be brought on for a hearing

during that term of the Supreme Court. They stated to me that my services would not be required and I might go home. I went and left them here—Mr. Rantoul still sick. The next knowledge I had, was, that Rantoul and Green had left the city and gone home.

Q. Do you not recollect a conversation with me in which you desired me to continue that cause till the fall term; and that I replied I should press it to a hearing?

A. I do remember conversations of that kind, but no particular conversation nor time. That was the invariable tone of all your conversations with me. I think you were the controlling counsel in that case.—It was originally commenced, I believe, by other counsel. All the notices I had received for some time, had been from Botkin and Knapp, but still I considered you as the controlling counsel.

Q. What was the precise language of the telegraphic despatch you received from Judge Hubbell?

A. It was something like this—"You must return and argue that Cushing case to-morrow."

Q. Did any body come with you?

A. My impression is that Mr. Jordan rode up with me.

Q. How many days was it then before it was finally submitted to the court?

A. I do not think it was more than one day.

Q. You don't recollect of its being two or three days, and that frequent conversations transpired between you and I in the mean time?

A. I do not; but it might have been.

Q. Do you recollect saying to me in the front room below of the United States Hotel, that Judge Hubbell had stated that he would not hear a lengthy argument in the case?

A. It is very probable, but I do not remember the conversation.

Q. Do you not recollect of stating to me, in conversation upon that subject, that we had already discussed that matter so much and the case was narrowed down to so small a compass, and Judge Hubbell had so considered the information upon the subject that an hour was as good as a week occupied in arguing it.

A. I do not remember that; am certain I never said any such thing.

Q. Do you remember, finally, of suggesting the propriety of submitting the case without argument; because, whoever it should be decided against, an appeal would be taken, and it would be of but little consequence to argue the case, as Judge Hubbell had evidently made up his mind and it could not be changed.

A. That may have been; it was one of the reasons weighing upon my mind for submitting it without argument, after I found that I could not argue the case at length. I said I would not argue it at full length, because Judge Hubbell would not hear the argument; and then I might have said—the cause will go up on appeal at all events, for I am satisfied that the case is prejudged and I might as well not argue it. I required you to stipulate to furnish me the points on which you would argue in the Supreme Court, some ten days before; and you did stipulate to that effect. I think you will find that in the stipulation.

Q. As an additional reason why you proposed to submit the case without

argument, did you remark that any argument you could make would amount to nothing, as Judge Hubbell had already formed his opinion?

A. I recollect of forming an opinion, during the argument of exceptions, that he had already prejudged the case, and I presume I may have said so to you, that I did not suppose it made a great deal of difference, because no argument I could make would have any effect upon him.

Q. Do you recollect a conversation upon this subject, in which you and I came to this grand conclusion, that if we once got at the argument there would be very little probability that the Court would stop us till we got through?

A. I do not recollect that. I do not think any such thing was said between us.

Q. Do you remember of being present in the clerk's room when this matter was up, and that a conversation transpired in relation to hearing the matter, and you made some statement of the time required to make the argument, and Judge Hubbell replied that he could not listen to an argument of that length, and that an hour or so was all the argument he desired to hear, as the cause was narrowed down to a single point.

A. I have no recollection of the place you speak of, nor of your being present. The conversation which I recollect was, that I was trying to impress upon the mind of the Judge, that it was unnecessary to argue that cause at that present term of the court; that it might just as well lie over until the fall term, because then it would be in time to get it into the Supreme Court on appeal; and as a reason why it should lie over, I said that all parties were anxious to get away—the Judge was in a hurry, and I was in one myself. I said it would take a week at least to argue that case. It was then that the answer was made by the Judge that he would not hear an argument of more than an hour in length on that case. My impression is, that that was in the United States Hotel. I do not recollect whether you or any person else was present.

Q. Another fact. Do you recollect that on the 23rd of July, it was agreed that the cause should come on the next day.

A. My recollection now is, that on the evening of the 23rd of July, we, together, came to the agreement that we would stipulate; and I think it is probable that on the 23rd, this conversation which I had with Judge Hubbell occurred. My impression is, that on that evening we agreed that we would sign a stipulation, and, perhaps, we drew it up. We probably signed it the next morning. My recollection is, that either you or I took the paper to the clerk's office and filed it; but I regarded the case as submitted by the stipulation.

Q. Do you not recollect that after we had been before the Court, and it was announced that the cause must come on the next day, we agreed upon the manner of stipulation in your room in the "States," and I went out and drew the stipulation, and that the next morning we signed it, I brought it up to the court, and you returned home.

A. My impression is, that it was prepared the same day in the morning, and that you drew it in my room in the United States Hotel; that we both signed it there; I stepped into my carriage and went home, and you filed it, and the filing was the submission of the case.

Q. You speak of a remark made by the Judge in Court, from which you inferred that he had prejudged the case; when and where was that?

A. It was at the argument of exceptions on the second answer, and while those exceptions were being argued.

Q. Do you recollect whether Mr. Collins or Mr. Knapp was there?

A. Mr. Collins was there, and George B. Smith was there, having something to do with the case.

Q. Was that a remark made upon disposing of the exceptions.

A. It was in this way—one of the exceptions was taken up, and I argued that the exception was badly taken, and that the answer was sufficient. The remark was made in reply to what I said.

Q. Do you recollect what you insisted upon.

A. I do not recollect that, nor what the exception was. I recollect the manner and the language of the judge, and it was as much from his manner as from his language that I formed the opinion.

Q. Well, sir, what was that remark.

A. It was this—in reply to something I said in relation to that exception, and under a great deal apparent excitement, Judge Hubbell said—"Gen. Cushing has not answered that bill, and he cannot answer it." I recollect of replying somewhat tartly, that that was prejudging the case. He then responded that he did not intend to prejudge the case.

Q. Do you recollect of stating, before that remark was made, that Mr. Cushing had answered as fully as he would answer.

A. I do not recollect of making that statement, but as it is a very long time since, I would not say that I did not make it.

Q. Was this stipulation which you had filed before or after the remark was made?

A. It was six months after. This remark was made in the fall term, previous to the July term, when the stipulation was signed.

Q. It was made previous to the stipulation about the answer?

A. My impression is, that it was made at the same session of the court. If not, it must have been made on the argument of the exceptions to the previous answer.

Q. I would like to have you state as distinctly as possible, whether that remark was made at the time of arguing the exceptions, on the first or second answer?

A. My impression is, it was on the second answer. After that I filed a stipulation setting forth that we had answered all we knew. I did not previous to his making that remark, say that we had answered all we knew. I was taken up in the argument by the judge.

Q. Do you remember of making any such remark in the presence of me or any one?

A. I recollect saying when the exception to the second answer was sustained, that that was all the answer that could be made. I was willing to stipulate that we could not swear to any thing more.

Q. That was after the Judge made the remark?

A. Some time after. I did not use any argument to show that Mr. Cushing had answered as far as he was able to, that I recollect. That would be very natural, however, to do. I was very willing to put that in writing, stating that we would not attempt to bring in anything in proof that was not in the answer. I recollect all that.

Q. You do not recollect that after these matters of exception were submitted to Judge Hubbell, that you, Mr. Knapp and myself were at the United States Hotel, and that we replied back and forth somewhat tartly, and you made the declaration that that answer was as complete and full as it was possible for a man to make it?

A. I have no recollection of making such a remark at the United States Hotel. I have no recollection of having those exceptions up before Judge Hubbell at the United States.

Senator DUNN. After the papers in the cause were read to the Court, would the argument of the questions involved necessarily have occupied more than one hour?

A. My impression is that it would. I recollect of arguing the case on the bill when Judge Dunn was opposed, and I recollect that we argued the bill nearly a day without any answer to the bill.

Senator DUNN. Is the reading of the papers in a cause of chancery, any portion of the argument in a cause?

A. Perhaps not, strictly speaking; but when we speak of time covered by the argument, we speak of it as time occupied in reading the papers as well as upon the argument based upon the papers.

Senator DUNN. Were you or not familiar with the questions involved in this cause from the time of the demurrer to the bill and motion to modify the injunction were argued and disposed of before his Honor Judge Whiton, at a special term of the Green county Circuit Court?

A. I was familiar myself with them.

Senator DUNN. When were the demurrer and motion referred to, argued before his Honor Judge Whiton?

A. My impression is, that it was in the spring of 1850, or July, 1849. I recollect that the cause was argued in the Supreme Court, in the first place by Mr. Francis J. Dunn, before Judge Whiton, while sitting here holding Supreme Court, not for the purposes of decision, but for disposing of the point whether it was necessary to hold a special term in Green county. He decided that it was necessary. I went to Green county and argued the case. Whether it was after the winter or summer term I do not certainly remember; I am inclined to think, however, that it was after the summer term.

Senator DUNN. How long would it require to make preparation to argue the cause, by counsel familiar with the questions involved for the length of time of which you have spoken?

A. I was familiar with the facts in the case, and with the points of law which had arisen in reference to it during the time the cause was progressing, but with all the knowledge I had of it, if I had been about to sit down and prepare to argue that cause to my own satisfaction, taking into consideration the business about a lawyer's office, I should want two or three months to prepare it. But if applying myself solely to it, and doing nothing else, I should want a fortnight at least, and I doubt whether a man could prepare himself even in that time to do full justice to it.

Senator BASHFORD. Is it not customary in cases of great importance, involving many points of law, when it is regarded certain that the party beaten will take it to the Supreme Court, to have but a brief and formal argument before the Circuit Court.

A. Well, in practice I have not known such a thing customary. I always argue the case without any reference to its going to any other Court.

Mr. KNOWLTON. Are you aware that it is the practice of the Supreme Court of this state to exclude from limitation of argument the time it takes to read the papers in the case?

A. I am not. I have generally had all the time I wanted. I have not made an argument since a rule was adopted as to time.

Q. In what court was this cause commenced.

A. I understood it to have been commenced, and the papers, I believe, show it, in the Crawford county Circuit Court. I was not employed then in the case; but I know it was removed from Judge Jackson, and he sent it to Judge Whiton.

Q. Was that cause afterwards removed from Judge Whiton to Judge Hubbell, on the ground of prejudice.

A. I have never seen the affidavit; I have understood it was removed on the ground that Judge Whiton was prejudiced

Mr. KNOWLTON. Yes, they have all been prejudiced from beginning to end.

Senator WAKELEY. How many terms did the cause remain in the Circuit Court from the filing of the bill till the rendition of the final decree.

A. The papers, I suppose, will show that. I cannot undertake to state precisely. I am inclined to the opinion that the bill was filed in October or November, somewhere about the close of navigation, 1848. It was decided July term 1851.

Mr. ARNOLD. Previous to this decree of the 25th July, had there not been an order dismissing the bill as to all the defendants except Cushing.

A. I have understood there was. The order was made here, without my knowledge and without any notice. I never knew of the existence of the order until I was informed of it by mail, six weeks or so after the decision was made.

Q. Supposing that was the case, as the records show that the parties were not before the Court, was not the obvious point that the parties were not before the Court.

A. I should have raised that point.

Q. Well, could not that point have been argued in an hour?

A. If I had argued the case, I should not have argued that point only. I should not have regarded myself as having discharged my duty till I had argued every point in it.

Mr. RYAN. How was the title in that stipulation, when you signed it. Look at the word below there; will you read your signature? A. It was.

William S. Hungerford, Complainant, *vs.* Caleb Cushing *et al.*, Defendants.

The words "et al." after Cushing's name and the final "s," have been erased since I signed it. My signature is "A. Hyatt Smith, solicitor for Cushing and Rantoul." I had no knowledge of the order when I signed the stipulation.

Q. Previous to your return from Janesville, were you telegraphed?

A. I was.

Q. Had you, previous to that time, used the same effort that you afterwards used to have the cause stand for argument at the fall term?

A. I did, to the counsel and to the Judge.

Q. For what purpose was the defendant, Mr. Rantoul, here at that time?

A. He came here, intending to aid me in that cause. Mr. Rantoul was a lawyer of considerable reputation in Boston; he is now dead, however.

Q. At the time Judge Hubbell said that Mr. Cushing had not answered and could not answer the bill, was there any other remark made by Judge Hubbell in regard to the merits of the cause?

A. I have no recollection of any thing else. That was the substance of what was said. It probably was said in more words, but I have stated the substance.

Mr. KELLOGG was recalled, and produced the records of the Circuit Court of Dane county in the case of Hungerford against Cushing.

Mr. RYAN read from the records and the decree in the case.

Mr. KEENAN was recalled, and produced the records of Milwaukee Circuit Court in the case of Trentledge against the Milwaukee and Mississippi Railroad Company, as mentioned in specification two in article nine: also records in the case of John L. Doran two indictments against him for embezzlement, as mentioned in the eleventh specification of article ten. (Reading deferred.) Also the papers and records in the case of the Board of Supervisors of Milwaukee county, against Sylvester W. Dunbar.

Mr. Sanders, on the part of the Managers, moved that a writ of attachment be issued to compel the attendance of James Kneeland, A. F. Pratt, Charles K. Watkins, and Amos Sawyer, witnesses duly subpœnaed to attend this Court.

Which was agreed to, and attachment issued returnable forthwith.

Court adjourned until 3 o'clock P. M.

AFTERNOON SESSION.

Mr. SANDERS. The Managers have been instructed by the Assembly, to present to this Court an additional specification to article seven, of the articles of impeachment, which specification will be numbered nine. This additional specification is substantially a copy of specification three of article seven. The only alteration is that of one word, laying the Court in the county of Milwaukee instead of the county of Jefferson. The Assembly deemed it advisable to present an additional article to prevent any change of illegality or want of proof. The specification is as follows:

"Additional specification to the articles of impeachment exhibited by the Assembly of the State of Wisconsin, against Levi Hubbell, Judge of the second judicial circuit of the State of Wisconsin, in maintenance and support of their impeachment against him of corrupt conduct in office, and for crimes and misdemeanors.

Specification nine to article seven.

Specification 9.—That he, the said Levi Hubbell, Judge as aforesaid, knowing that Eliza C. Wyman, the wife of one William W. Wyman, was living apart from her said husband, and was desirous of obtaining a divorce from him, had contrary to public decency, and his duty and obligations as a Judge, a private and indecent interview with her, and in such interview did counsel and advise with her, in relation to such divorce; and that he, the said Levi Hubbell did afterwards permit the said William W. Wyman, who was also solicitous to obtain a divorce from his said wife, to exhibit affidavits to him in support of such divorce, and did thereupon advise the said William W. Wyman that such affi-

dowits did not establish grounds for a divorce, but that he, the said William W. Wyman, could accomplish his end by permitting his said wife to obtain such divorce; to which said William W. Wyman assented, informing him, the said Levi Hubbell, that he, said William W. Wyman, would suffe. his wife to obtain such divorce; and that afterwards he, the said Levi Hubbell, well knowing such collusion between the said William W. Wyman and his said wife, did, as Judge of the Circuit Court of Milwaukee county, by collusion and favor, and contrary to law and justice, and without justifiable cause, and against his duty and obligations, make a decree of the said Court granting a divorce against the said William W. Wyman, in favor of his said wife.

And the Assembly, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles or other accusation or impeachments, against Levi Hubbell, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every of the aforesaid articles, and to all and every other article, impeachment or accusation, which shall be exhibited by them, as the case shall require; do demand that the said Levi Hubbell may be put to answer the said corrupt conduct in office, crimes and misdemeanors, and that such proceedings, examinations, trials and judgments, may be thereupon had and given, as are agreeable to law and justice.

ASSEMBLY CHAMBER, Madison, Wisconsin.

I hereby certify that the above is a true copy of the additional specifications to the articles of impeachment against him of corrupt conduct in office, and for crimes and misdemeanors.

HENRY L. PALMER,
Speaker of the Assembly.

(Attest)
THOS. McHUGH,
Chief Clerk of the Assembly.

Mr. SANDERS, on the part of the Managers, submitted the following notice:

"The Managers of the Assembly move the Court, that the Judge of the second judicial circuit, be ruled by this Court, to answer the additional specification presented by the Assembly, within such time as the Court shall direct in that behalf. And that the Clerk of this Court furnish a copy of such additional specification to the defendant."

I suppose the defence understand that the plea of the defendant may stand as it was given, if he chooses to allow it to do so. I wish to ask some action upon that specification at the present time. I do not know how it may be proceeded with, unless some rule is prescribed by the Court requiring the respondent to answer.

Mr. ARNOLD. We did not conceive ourselves, and do not now conceive ourselves, under any obligations to notice in any manner whatever, the paper which has just been presented by the Managers of the Assembly. We had supposed certainly, that it required some action of this Court before we would be called upon to notice it in any manner whatever. At the proper time, if the action of this Court shall render it necessary for us to notice it, we shall be prepared to do so in some proper manner. We do not, however, understand that the respondent is to be exposed to additional charges or specifications which may be sent in here at any moment, from time to time, by the Honorable the Assembly; if so, we know not when there may be an end to this proceeding. The

respondent has been compelled to come here upon due notice, to defend himself against certain charges of corrupt conduct in office, and crimes and misdemeanors, and he does not understand that he is to be compelled at the mere volition of the Assembly, to suddenly be prepared to meet other charges which the assembly may from time to time send in, whether new or old charges, revamped and modified to suit any proof that the prosecution, with its hundred, out-door, bull-dog assistants, may be able to run down. This is a stale, and as the respondent knows, a most unfounded charge—I mean the charge in the third specification of the seventh article. It is now sought to ring a change upon that article, as I understand by the paper just read, and place the Court where the alleged collusion occurred, in Milwaukee county instead of Jefferson county. I do not understand that they expect to show that this alleged collusion existed in one or both, nor in which one it did exist. I only rise, however, to say, that if compelled to do so by the action of this Court, we shall then be ready and willing to answer, and not till then.

Mr. Ryan. I had supposed, and I suppose now, and under the law of impeachment, every impeaching body may see fit, by protestation, to reserve to itself the right of preferring other articles. I had always supposed so. I have to see articles of impeachment preferred, without the reservation of such a right, in any case. That reservation was made here, and if this charge was one wholly new; if this specification was utterly new matter, presented here by the Honorable Assembly through their Managers, I trust that this Court would receive it as they are constitutionally bound to receive it, and make such disposal of it as in their discretion they see fit; and I had presumed that this Court would be treated with the courtesy and propriety of language suitable to so high and honorable a body. The Assembly, sir, have no out-door bull dogs—I won't retaliate the charge. The Assembly have not re-vamped any stale story here. I do not know on what suggestion, or from what motive, or from what quarter such language comes; but I know a very simple matter—that if "the galled jade winces"—that is not the fault of the Assembly. I know that here is a specification alleging certain facts, which the Assembly of this State thought was ample matter of impeachment of the defendant now upon his trial. I know that upon the face of the papers, by a mistake, the Court was wrongly denominated, the "Circuit Court of Jefferson county," instead of the Circuit Court of Milwaukee county. I very much doubt if in the liberal administration of the law of evidence in the trial of impeachments, it would be a variance which ought to shut out our testimony in this case; but to avoid all charge of illegality, the Assembly have taken the course they now pursue, and introduce this new specification. Believing that the Assembly ought not to be impeded with misdescription; believing that the accused did not want to shut out the evidence upon that charge upon a mere allegation of variance, the Assembly have presented the same specification, denominating the Court correctly. It is the same specification with this very slight alteration. It alleges no new fact. That is truly a vast surprise to the defendant, here—a vast hardship to him. I had supposed from all that had been said here, that the defendant really wanted a trial upon these facts upon their merits, and acquittal, if he obtains an acquittal, upon their merits, and not shut the charges and specifications out upon a misnomer of the Court; and I must say, whatever is the proper course to pursue here—which I am not prepared to say—whatever is the proper time to

answer; and whatever is the proper proof upon the specification, I must say that the manner in which the specification has been met, surprises me. I had supposed that as a matter of course, that if we had even offered evidence under a mislocation of the Court, no objection would have been taken against it. I had supposed, as a matter of course, when this amendment was offered, the defendant would be first to get up here and accept it, instead of meeting it in the manner he does.

Mr. ARNOLD. I beg not to be misunderstood by the Court, even if I could be by the counsel for the Managers. The honorable the Assembly, after several months of severe travail and labor, have brought forth these things in this little book, (pamphlet charges,) and now the honorable Assembly, by its honorable Committee, and by its distinguished counsel, have come into this Court to prosecute the charges and specifications of the Assembly. I believe every member of this Court will bear testimony, that thus far in this investigation, the respondent and his counsel have done every thing in their power to promote the object which the prosecution had in view—I mean the speedy prosecution of this investigation. We have thrown no obstacles in their way. We have not confined them to a strict order of proof. We have assumed things to be in the case which they assured us would appear in proof; but it appears now that they are crowding the thing a little too far, when the Managers get up here and propose a new article of impeachment against the respondent, with his permission and consent, for that was substantially the language made use of by the honorable Manager when he proposed an additional article with the assent of the respondent; and that assent should be deemed by the prosecution to cover this as well as prior articles. Now, I think there is a prior matter for this Court to settle—one with which this respondent has nothing to do—and that is, whether the Court will entertain this proposition; whether it is properly brought up. If they do, then we will be called upon to notice it, and shall be prepared to do so in a proper manner.

Mr. KNOWLTON. I wish to submit a very few observations in relation to this matter, as it has brought forth some discussion, and I shall confine myself to what I understand to be a correct view in cases of this character. It is certainly important in principle to set a precedent that can with safety be followed by subsequent courts in this State, in cases of this character; and if any decision can be found wherever a similar course has been adopted upon the indictment or impeachment as a matter of course the intelligence of this court will readily understand the truth and force of such precedent, and will take such course as is consistent with principles of law and human justice. If, on the contrary, it does not strike the minds of the members of this court as in consonance with justice, I apprehend they will meet it and dispose of it in like manner—that is, as it should be done—according to law. The question is not as to whether the Assembly may introduce additional articles of impeachment; that is not the question. We admit that it is necessary to discuss that question at some time, but the time when it may be done, is the question presented to the consideration of this court. Now I suppose this trial is somewhat like a trial in criminal cases upon indictment. It has been asserted, I believe, by the learned counsel who opened this case on the part of the State, that the articles of impeachment presented here, were presented by the grand inquest of this State; a body in precise analogy to the grand jury in courts of law. I presume no

one will doubt that if an individual had been indicted for perjury, and a jury had been empannelled, and he put upon trial before that jury, and witnesses had been examined, and then another, or the same grand jury should send in another indictment upon the same matter, no court would permit that to go before the jury at all. The jury are sworn to try a particular issue. I understand that the members of this court are sworn to try particular issues; to try these various charges and specifications in issue, therefore, it is not the right of the Assembly to introduce new articles of impeachment—because no lawyer doubts that right—but the question is as to the time when that may be done, and that I apprehend must be judged of by this court. That is all I wished to do—to present that view to the consideration of this court. I trust we shall be ready, as hitherto, to meet your decision, whatever it may prove to be, and I trust we shall not be found wincing under it to such a degree as to create any great alarm in the breast of any man.

Mr. SANDERS. The learned counsel for the defence entirely misunderstood me in saying that we came in here to present an additional article of impeachment against the respondent, and asked of the respondent liberty to do so. The Assembly introduce that specification as a matter of right—a right which has been reserved in every impeachment which has ever been preferred. It amounts to no more nor less than an amendment. It is such an amendment as, in any Court of law, could be made at any time of its progress—even after judgment. I made this statement in regard to it—that we would consent that the answer of the respondent, already made to the articles of impeachment as they have hitherto stood, might stand to this specification; or they might take such other action as they deemed advisable. I do not understand the meaning of the counsel in his allusion to the out-door bull dogs of the prosecution; I presume he means the Honorable the Assembly. If they are the bull dogs, I can assure him that no member of that legislative body has courted the painful position which, in their legislative capacity they have been called upon to fill.

Mr. ARNOLD. The Honorable Manager could not have misunderstood my language, and I disclaim its application to the members of the Assembly.

Mr. SANDERS. Well, then, I will say that the managers have not been induced, nor influenced, by any out-door bull dogs; they have been called upon to discharge a constitutional duty, and they have done it fearlessly and manfully—not ininjustice, and influenced by personal feeling, or by out-door appliances; but in duty to their constituents.

Judge HUBBELL. In addition to the remarks of my counsel, I wish to say one word. I am here to answer to a charge, criminal in its nature. This Court will accord to the respondent, the same principles to govern his rights, which the common law of the land gives to every person. I had supposed, when charges were preferred to so distinguished a body as this, that that body was to receive and act upon those charges, and that the party who was to be the object of them, was to have due notice and proper time to respond.

I did not suppose that the accused would be detained here with a new proceeding, brought into Court without notice and be called upon to respond without notice and without time to answer it.—As to this new charge, when the Court has received it, I am ready to meet it. I covet the opportunity to meet that charge, because I know and can prove it to be without foundation in fact; and that my whole course in the matter was without wrong in thought, word or deed.

The question was taken on the adoption of the new specification, and decided in the affirmative. Ayes 18; noes 11.

Mr. SANDERS, on the part of the Managers, then submitted the following motion:

"The Managers move the Court that the defendant answer the additional specification by Friday morning next."

Which was agreed to.

Mr. SANDERS. The Managers have named the time; but they are not at all tenacious that that time should be fixed upon, they only wish to have the time fixed within the time we wish to close the testimony on the part of the prosecution.

Senator DUNN. I would inquire of the Hon. Managers who have submitted this additional specification, whether the proceedings of the Court are expected to be suspended until the respondent makes his plea.

Mr. RYAN. We have no such idea at all; we only name the time within the probable continuance of our testimony, so as to go on with the balance of our proof upon other specifications. We propose to go on now just as if this new proposition had not been introduced.

The motion was now adopted by the Court, all the senators voting in the affirmative.

Mr. RYAN. Mr. President, when the Court adjourned we had the record of the suit of the board of supervisors of Milwaukee county against Dunbar, under consideration. Will you, Mr. Keenan, let me have it again, as I have not read it through. I was upon the transcript of the suit of October 1851, Mr. President, when your hammer interrupted the agreeable recital.

Mr. RYAN continued the reading of the transcript.

Mr. KEENAN was recalled, and produced the papers in the case of Treadwell against Richards, mentioned in ninth specification of article nine; also in the case of Converse against Rogan, specification seven, article eleven; McBride against Wheeler, specification eight, article eleven. All which papers were read to the Court.

WALTER H. BESLEY was called, sworn, and examined upon specification five, article nine.

I am clerk of Jefferson county circuit Court; I have the papers in the case of the State against John and Gilbert Lane. Which papers were read to the Court.

WINFIELD SMITH was sworn and examined on specification one, article nine:

I reside in Milwaukee. I am a lawyer by profession.

Q. Do you recollect the case of Trentledge against the Milwaukee and Mississippi Rail Road Company. A. I was one of the plaintiff's attorneys.

Q. Do you recollect the rendition of the verdict in that suit. A. I do.

Q. And of making and filing a motion for a new trial? A. I do.

Q. After that motion was filed, and before it was decided, did you have any conversation with Judge Hubbell upon the subject.

A. I think I did. It must have been between the filing and the decision of the motion. It was in the court room one morning in open court. The only conversation which I well recollect I will state: Judge Hubbell called me up to him, and said, Mr. Smith you had better take $200 for your verdict, and let it stand—or something to that effect. I replied, that we should not do it.

Q. What were the facts proved tending to establish damages on that trial.

A. Well, sir, the substantial facts, so far as the actual existence of tort were concerned, were proved—and various damages, evidence of which were admitted—were proved to the amount in all of $405. Then, in addition to that, there were some other items of damage proved; such as fruit trees carried away by the flood; and some other similar matters, which the witnesses would not fix any estimate upon.

The defendant's witnesses of course gave evidence to reduce the damages. I was not present when the motion for a new trial was disposed of.

Mr. RYAN. I wish now, to examine Mr. Smith upon the sixth specification of the same article, (9).

Q. Do you recollect the case of McGrath against Cook?

A. Yes, sir, I was one of the complainant's counsel and solicitor.

The pleading, bill and answer were now read to the Court.

Q. Now, Mr. Smith, were you present before the motion was made for an attachment in that case as read from the transcript—an attachment against Cook the defendant, for not paying into Court the orders spoken of? A. I was.

Q. Had you any conversation with Judge Hubbell; and if so, what upon the subject of the receipt of the order and the motion for the attachment?

Mr. ARNOLD. What is the object of that inquiry?

Mr. RYAN. The purpose is to draw out the conversation of Judge Hubbell, for the purpose of proving this specification.

Mr. ARNOLD. The specification is that he entertained a "motion to dissolve an injunction, and forcing such motion to a hearing, and deciding the same against the complainant, without reasonable cause." Well, now your records show that the first motion to dissolve the injunction was made upon the bill alone, and before any answer had been filed, and that in October after an answer had been filed, and after these proceedings, by way of attachment, then the injunction was dissolved. I wish you would submit to the Court, whether your own record does not clear the respondent from the charge in the specification. The question is objected to, directly for the reason of irrelevancy, and the objection of course is based upon the supposition that there is something in the specification, to which the witness is called, that is properly before the Court and about which testimony may be adduced. There is objection in the second place of a more general nature, and that is this: that there is really, now, after the submission of the record by the Hon. Managers, nothing in the specification to which parole testimony can properly be adduced. The *gravamen* contained in this specification, is that the Court entertained a motion to dissolve the injunction in this case, and did dissolve it without reasonable cause and without any motion to that effect by the defendant, and when in fact a previous motion had been refused in the same state of the cause. That is the charged contained in the specification.—Now, by reference to the record, it appears that an order was taken. (Mr. Arnold here read a part of the transcript in the case.)

Now, I submit to the Court that this record is a virtual decision of the case, when we look at the specification in reference to which it is introduced. The fact is, that the first motion to dissolve the injunction was not made when the suit was in the same stage as it was at the time of the final order to dissolve the injunction. It was a motion upon the bill alone, and before any answer had been taken. The injunction was not dissolved, but it was so modified to

permit the complainant to draw from the ward officers the orders to which he was entitled. Now that question which is before the Court is directed to a conversation with Judge Hubbell, previous, I believe, to the time of the contemplated attachment to compel Cook to pay the money into Court, and inquiries as to those orders that were to be obtained. I cannot see what relevancy any conversations in regard to those orders in the hands of Cook can, by any possibility, have to this charge, which is that the Judge unreasonably and without cause, at one part of the case he had granted an injunction, when he had refused one in the same stage of the case. The record show that the fact was not so. It was not in the same stage of the case, and I suppose it would be made to appear that the complainant—I judge so from the answer as well as from the respondent—had not tendered to the defendant the proper amount of money, and therefore could not ask that those orders should be delivered up to the complainant. It was asking an injustice. Now, the reason of this objection is partly in reference to time, and partly the inability of the respondent to meet irrelevant testimony which he might desire to rebut. We have, to-day, had occasion to take the names of several persons whom we think we may have to send for to distant parts of the State. Now, if this evidence is introduced, it would be quite likely to oblige us to take the names of Mr. Watkins and Mr. Cook, in California. It is hard to put us upon the matter of such explanation, if the matter be irrelevant.

Mr. Ryan. Mr. President, the Managers of the Assembly certainly do not desire to introduce any irrelavent testimony here, and the only question is not whether it is really convenient or inconvenient to meet the testimony, but whether it is relevant. If it is relevant, it is right to give it, however inconvenient it may be to meet it. I understand the specification differently from the counsel on the other side, and I understand the record differently. The charge is: "That the said Levi Hubbell so being Judge of the second judicial circuit, has arbitrarily and oppressively exercised the functions of his judicial office, of his own mere will, and out of favor or enmity to the oppression of suitors, and the manifest scandal and danger of the administration of justice." To that charge, this specification applies. The specification is. (Mr. Ryan read the sixth specification.) Now in the first place, I contend that the *gravamen* of that charge, "The oppressive exercise of the functions of his judicial office of his own mere will," that the *gravamen* of that is the *gravamen* of this specification, and that is, that he himself gave the notice to the counsel of the complainant of a motion to dissolve the injunction, and forced that motion to a hearing without reasonable cause, and without any motion having been previously made by the defendant, and it is added in aggravation of that, that he dissolved the injunction, after having refused to do so in the same stage of the case. Mr. President, it would be no allegation of arbitrary and oppressive exercise of the functions of his judicial office to the oppression of suitors, to say alone that he has at last dissolved the injunction, after having refused to dissolve it in the same stage of the case. A judge might vary without any arbitrary exercise of the function of his office, at the same stage of a cause, refuse to dissolve an injunction, and at a later time dissolve it, whether the cause remained in the same state or not. He might be convinced that he was wrong—he might see that his first decision was wrong; or, although the cause had not changed, the cause remaining in the same position, the mere lapse of time might make it proper

to dissolve an injunction, so that it would be no charge against the defendant, to say he had not dissolved it before. That of itself is no imputation. It is put in here merely by way of aggravation. This charge is, that he himself gave the notice to dissolve the injunction, that he forced that motion to a hearing, and that then he did decide the motion against the complainant, without reasonable cause. That is the gist of this specification; and even if it did appear that the case was in another *statis*, I should contend that the record does not contradict the specification. The *gravamen*, the object, the substance, is in no way weakened by that, and we can go on and give our testimony; but does the record show that? I contend it does not. The cause is in precisely the same state.

Mr. President, every legal member of this body knows, and I presume the lay members know, that when a complainant in chancery files his bill in chancery, putting the defendant to answer it upon oath, he makes the defendant witness for himself in the cause, and it requires the weight of two oaths to overcome any allegation of such an answer in direct response to the bill; and that that answer so sworn, is evidence to dissolve any injunction, so that when the complainant comes into Court and voluntarily trusts to the defendant's oath, he makes the defendant a witness against him; but the rules now established, and which have the force of law, give to every complainant the right to distrust the oath of the defendant, taking from him the power of putting in evidence by waiving the defendant's oath to his answer; and when that oath is waived it is immaterial whether the defendant put his answer in under oath or not. It is an immaterial oath and he is not bound to take it. When the complainant waives the oath in the answer, I undertake to say that that is an immaterial oath, on which no assignment of perjury can be made. The defendant cannot voluntarily intrude it into the cause, and the answer under oath or the answer not under oath put into a bill which waives the answer under oath, is not evidence in the cause. It is merely a pleading in the case, and it is no evidence upon a motion to dissolve the injunction. Then let us turn to this record; we find here that upon the 10th of March, the court, upon motion to dissolve the injunction, only modifies the injunction to receive the orders and to pay them into the court. It appears that a laborer, who had a contract with some ward in Milwaukee, was receiving his pay in what were known as ward orders, I believe. This man, the complainant, in order to obtain money, pledged his contract to the defendant so as to authorize the defendant to receive the orders fron the common council of the city of Milwaukee. When this dispute arose, it appears he filed this bill, and got an injunction restraining Cook from receiving any more orders. The Court seems to have decided that the orders ought to be collected and paid into Court; that the common council ought to pay them; but that they ought to be paid into Court, and permitted the defendant to go to the common council and get the orders, and pay them into Court. Some time passes along, and this man, Cook, has received the orders, but has never paid them into Court; and an application is then made for an attachment against him. After that man had kept these orders for months, when the complainant moved for an attachment against him, when there was a clear breach of the order of the Court, where the defendant is in contempt of the Court, the order is, that the solicitor may stand responsible, and then the Judge turns round and makes a motion himself, and dissolves the injunc-

tion. I say that the answer under oath, when the answer under oath was waived by the bill, does not change the state of the cause. It stood still upon the bill and the bill alone. Every legal member of this Court knows that; and that the answer should have counted nothing, and did count nothing. I now offer to prove Judge Hubbell's conversation to satisfy this Court, that he did know, himself, that at the time he dissolved that injunction, he was dissolving it without reasonable cause. I assume this question to be relevant, or I should not offer it.

FOURTEENTH DAY.

WEDNESDAY, June 22.

AFTERNOON SESSION.

Mr. RYAN. I recollect the Court adjourned last evening, while the question of presenting a certain interrogatory to the witness was pending.

Mr. KNOWLTON. Had you closed your remarks last evening?

Mr. RYAN. I had.

Mr. KNOWLTON. In support of the question against the interrogatory, I wish to submit, in addition to what has been already said by my associate, some few remarks. It is contended by the counsel opposed, if I correctly understand him, that the allegation in the specification, that this injunction was dissolved when the cause was in the same condition as when the motion to dissolve had been denied by the Court, is merely an aggravation of the offence charged, contending that the offence that is absolutely charged, is that he arbitrarily and oppressively exercised the functions of his judicial office, and out of favor or enmity to suitors, and that it is applicable in this particular specification to a particular suitor. Let us examine for a moment and see, if in point of fact, that construction can be placed upon the language used, and be in accordance with well settled principles of law. By dissecting the sentence somewhat, we shall be able to get a correct opinion, I apprehend, of what is charged, I ask, whether an allegation that a motion to dissolve an injunction, and that was dissolved by the Court, though previously refused, would carry upon its face the least evidence, although admitted to be true, in law, that the party was guilty of an offence. The counsel opposed, I believe, in his argument, has fully shown to this Court that it would not. That a Court might, for many good and sufficient reasons dissolve an injunction at a subsequent stage of the cause, after he had previously refused to do so. Well, if that be so, that would amount to no charge whatever, and, therefore in order to constitute an offence impeachable in its nature, they have alleged some facts connected with the charge, that the party is guilty of a wrong, and without that being so stated, there is no wrong charged. It is a little extraordinary to assume here, that when it is alleged that a particular act was done under particular circumstances, that that act is merely an aggravation of the offence charged. If it is alleged that an act was done under particular circumstances, I apprehend that it is the soul and essence of the charge, so far as matter of fact is concerned, and that it becomes material to prove it. Now, suppose they should prove that the motion to dissolve the injunction had been denied—and then suppose they should prove, as they already have, that that injunction was subsequently dissolved—if there was nothing more in the case

than that, that very proof would establish the charge, so far as the specification is concerned. But they then go on and say, the injunction was in fact dissolved, when the case stood in the same position that it did when the Court refused to dissolve it. This allegation then becomes material, and must, as a matter of course, be proved; because, if they fail after making this allegation, to show that that was the state of the case, then, I say, the proof does not come up to the allegation, and no cause is made out. This is a variance of a material character. This is a total want of evidence to establish an offence. Now, in this case, they have introduced the record, and by that they have shown the particular condition in which this suit stood when a motion was presented to the Court to dissolve the injunction. The record does not show that the motion to dissolve was refused. It is only inferred, in fact, that the motion was not sustained, but that the Court did modify the injunction. You can only come to the conclusion, that it was derived from the fact that the injunction was modified.

They then go on and show that the case stood in a different attitude, and subsequent to the time when the injunction was modified an answer was put in, wherein the party denies all the equities of the bill. Universal equity jurisprudence teaches, and the counsel will not deny it, that when a defendant comes into Court and denies all the equities of the bill the injunction must be dissolved, as of course, although the bill should finally be established in all its material points and the injunction again revived. I say they will not deny that, but the counsel opposed undertakes to evade, or rather avoid, a portion of this rule of law, by saying that the complainant in this case waived an answer on oath, and having so waived it, notwithstanding the coming in of the answer on oath denying all the equities of the bill, that that oath goes for nothing, and as a matter of course, the cause stood in the same attitude in which it did without an answer. I apprehend the gentleman will be led to this conclusion, that the answer admitting it in part and denying it in part, does not place the cause in the same attitude as before such answer was put in. It is idle to say, then, that there was nothing else in the case. It is something, or it is nothing. If it is something, then, I say, the cause does not stand in the same condition that it did before, when a motion to dissolve was denied. A denial without oath, I apprehend compels the complainant to prove the allegation of his bill before he can ask a decree at the hands of the Court. Will the gentleman contend before this Court, that if an answer on oath was waived, it did not change the condition of the case if an answer without oath denying all the facts alleged were put in? I apprehend that the gentleman will not seriously contend that a decree could be had without proving the facts alleged in this bill. I know him to be too good a lawyer to assume such a proposition in this or any other Court, and if so, did the case stand in the same position that it did before the coming in of the answer? Now, in relation to the extent that that answer would go is another and an entirely different question. That extent, as a matter of proof, is an entirely different thing. But I wish to say here, and I do it without the fear of any successful contradiction—I apprehend the counsel opposed is somewhat mistaken in relation to the law laid down yesterday, as to the effect of the answer, and the extent to which it is to be taken by the Court, when it is put in on oath, and when that oath has been waived. I believe, I say that I can state without any fear of contradiction, that the gentleman cannot possibly show any precedent in the books to warrant that position. I

have searched, some years ago, and never found it. Mr. Justice Story lays down the rule somewhat carefully, as he does almost every proposition, however well sustained by authorities, and he is considered the ablest writer upon the subject, yet he suggests that when the answer upon oath is waived, it is not by any means clear that by taking that course they can avoid the effect of the rule of law that it is evidence if put in upon oath. Now, that is the way Mr. Justice Story lays down the rule, and I do not believe the gentleman can find any thing in any of the books that will sustain his position. I examined this question some years ago, and could find no decision to sustain the position here assumed, and when the gentleman has sought some two or three months, I apprehend he will be quite as fortunate as I was. But that is not the question involved here, because if the complainant was put in an attitude by the denial of the material facts set up in his bill, even without oath, I say that the case was in an entirely different attitude; and I say further that it is an unbending rule of law, that where all the facts are denied that the injunction must be dissolved, as a matter of course. It is very likely that the rule sprang up under answers upon oath, and if the complainant will waive the answer upon oath, I know no reason why the rule shall not apply to a dissolution of the injunction. I am not aware that complainants can take that kind of advantage in law of defendants, and relieve themselves from the consequences of having their injunction dissolved when all the equities of the bill are denied. I say the legal consequences should follow in that case as much as if required to put the answer in upon oath. Then, whatever may be the rule in relation to that, it is quite clear, and the gentleman cannot controvert that fact, that the case would be in a different condition. Therefore this proof is entirely immaterial; immaterial, I say, because upon that rests this specification, that the case was in the same attitude. If it was not, then, I say, the proof won't show the commission of an offence at all. But again, it is offering parole testimony to do what?—to do away with a record which shows a different state of the case from what is alleged in the specification. Now the rules in this Court must be substantially the same as in other courts. There can be no doubt that that is the correct rule. It is so stated by the counsel opposed; and although indictments are not conceived to be applicable to charges in impeachment, yet the offence must be set forth substantially, and so as to make it appear as a crime; when the substance appears, the evidence must also appear, and any thing varying from it is not admissible. The rule that we cannot contradict a record, also applies, and they, by their higher grade of evidence, have placed it out of their power to introduce parole testimony afterwards. This much I felt called upon to say, and as Mr. Arnold will follow me farther in reply, I shall not trouble the Court with any farther remarks.

Judge Hubbell. With the indulgence of the Court, and by permission of my counsel, as I am familiar with the facts in this case and they are not, and as the entire question seems to have been avoided, I beg leave to make a simple statement. Here is an objection to evidence. The objection is, that the evidence offered is irrelevant. We suppose the common law governs here, in regard to evidence. The question is—did you have any conversation with Judge Hubbell on the subject of the receipt and nonpayment into Court of the ward orders by the defendant? That is the substance, really the question. What is the charge? The charge is two-fold: first, the Judge without reasonable cause,

dissolved an injunction; and not only that, that the Judge did it without any motion having been made, and without notice to the parties, and after having previously refused to dissolve it. That is what I am charged with. Now then does the question, "what did the Judge say to you," have any relevancy whatever to the charge that I dissolved the injunction without notice? We think not, and therefore make the objection simply to avoid consuming time, and in doing so have consumed four times more time than to have suffered the question to pass. Now what does the bill show in this case? It shows that about March 11th, a motion to dissolve the injunction, before the answer was filed, was in Court and being argued by the parties, and it shows that the Court did not decide that motion at that time, but it was so modified as to place those orders in Court for the safety of both parties.—The record shows that those orders were not paid over into Court, but were retained by the counsel. The Court, by attachment, compelled the parties to be secured in the honor or professional responsibility of one of the counsel. What had that to do with dissolving the injunction? Nothing, your honor, only that the Court refused to take up the motion, but held it over to be taken up at any moment by the counsel. It was nothing but a motion pending, lying over undisposed of, because a jury trial was waiting to be heard. It was passed over and laid upon the files of the Court, subject to be called up at any time. It was deferred till the individual who had permission to bring these orders to Court, made good his obligation, and then the Court did what it never had undertaken to do before, passed upon the motion, passed upon the bill itself, and then decided and told the counsel that this motion must be dissolved; and that is the whole of it.

A Senator asked—Was the attachment actually issued?

Judge HUBBELL. I think not.

Mr. RYAN. I will state to the Senator how it was. The records show that on the application for the attachment, the undertaking of the defendant's solicitor to pay over the orders when required, was agreed upon, and thereupon the injunction was dissolved, and no attachment was issued.

[Mr. RYAN read the transcript in the case of McGrath *vs.* Cook.]

Senator STEWART. What was the use of continuing that injunction, if the orders were in Court?

Mr. RYAN. The orders never were in Court. The injunction was so modified that the counsel was allowed to receive them and pay them into Court. He did receive them, but never did pay them into Court.

Senator STEWART. I understood that Mr. Watkins stipulated to pay them into Court.

Mr. RYAN. He stipulated to pay when required, and the same day that he made that stipulation, the injunction was released to him.

The question upon allowing the following interrogatory to be put to the witness, Winfield Smith, was put and decided in the affirmative. Ayes 17, noes 7.

"After the order of the Court, allowing the defendant to receive the Ward or City orders and to pay them into Court, and before the motion for attachment was made, had you any, and if any, what conversation with Judge Hubbell on the subject of the receipt and nonpayment into Court, of the Ward or City orders by the defendant?"

A. I had a short conversation with Judge Hubbell in relation to the non-payment of these orders into Court. I think I told him of the rumor I had heard, that the defendant had converted them. I had two or three conversations with the Judge, all the same in substance, and I may confound what was said on one with what was said in another. I told him that I felt that I ought to have all the orders paid into Court. He said that Mr. Cook had compromised him, and he too, wished the matter disposed of. I remember calling the attention of the Judge to the matter two or three times, for the term was getting near its close, and I felt it important that it should be done before hand. I urged the Judge considerably, and he said the orders should be paid in before the end of the term.

Q. Did he give any explanation of the way in which he had compromised himself?

A. He said he had sent a note to the common council, instructing them to pay the orders over to Mr. Cook, and that Mr. Cook had not treated him fairly in the matter; that Mr. Cook had taken the orders off to New York and converted them, and he was anxious for his own sake, and for the sake of all parties, that the matter should be arranged before the end of the term.

Q. Were you in Court on the return of the order, to show cause why an attachment should not issue against the defendant?

A. Yes, sir; I think the day which was fixed for showing cause there were other matters on, and it passed over to the next day; but the next day the parties appeared in obedience to the order to show cause, Mr. Watkins appeared as solicitor on behalf of the defendant, and I appeared on the part of the complainant. He had a bond there which he proposed to offer as security that these orders should be forthcoming. It contained a great many false recitals. I thought most of them were entirely false. I objected to receiving that bond because the allegations were untrue; then Judge Hubbell said, "there is no need of a bond at all—all I want of you is, that you should rise in your place and say on your hnor in this Court, that these orders shall be forthcoming when required." Mr. Watkins hesitated and said he would get a bond that would be satisfactor . The Judge again replied that a bond was not necessary. I think Mr. Watkins still hesitated and was still urged; but finally he did consent to that very thing; and at the time the clerk made the minute according to the instructions of the Judge, and it is on record. I think the order was, that these orders were to be paid at par with interest, or something of that sort. I requested, myself, in the first place, a bond; but I saw that the Judge was disposed to insist upon the other character of security, and so I did not insist.

Q. Did any thing take place then upon the subject of dissolving the injunction?

A. I am not clear now as to my recollection whether it was on that day or the day before, when we had all appeared there. I perceive from the record that the motion was made on the fourth day of October, that the parties should appear the next day. We did appear the next day, and Judge Hubbell told the parties to come up the next morning and the matter should be settled. He then said to me—"Mr. Smith, you will come up prepared to argue a motion"—or "the motion"—I think, however, he said, "a motion"—"to dissolve the injunction." I think that at the time I made some objection, but I am not cer-

tain about that. Very little more was said any way. We left the Court House then and came back the next morning.

Q. Had you received, at that time, any notice from delendant's counsel, to dissolve the injunction? A. No, sir.

Q. Did the defendant's counsel, prior to Judge Hubbell's making that remark, give any oral notice in Court, of an intention to move to dissolve the injunction?

A. No, sir.

Q. Was the first intimation which you had heard of, a notice to dissolve the injunction, the remark of Judge Hubbell, which you have stated?

A. Yes, sir, it was.

Q. When that motion came up, or at any time when the subject of that motion to dissolve the injunction, was up, did you as complainant's counsel, make objection to hearing the motion?

A. I did. It was made after Mr. Watkins had expressed his willingness to be responsible that the orders should be paid into Court. Then Judge Hubbell said something to the effect that "the argument will now be taken up upon the injunction." I then objected that I had not any proper notice of a motion to dissolve. Then Judge Hubbell said to me—and I think these were his exact words—"that is no matter, Mr. Smith, for it was understood yesterday, that you should argue it this morning." Then Mr. Watkins proceeded with his argument.

Q. Was it intimated at that time, in any way by Judge Hubbell, that the motion to dissolve the injunction, then argued and then disposed of, was the motion which had been made in an early stage of the cause, to dissolve the injunction?

A. No, sir; there was no motion in fact. I deemed that we were discussing a kind of oral motion, which oral motion was, in fact never made. I never heard of such an intimation till now.

Q. Was there any interval of time between the entry of Mr. Watkins' professional liability upon the record for these orders, and the argument of the motion to dissolve the injunction?

A. The last immediately succeeded the former. There was no interval of time between them. At least there might have been a few words or a few minutes, but nothing of importance.

Q. After the dissolution of that injunction, did Cook, the defendant, remain, or did he abscond?

A. I think I may safely say he absconded.

Judge HUBBELL. Am I any more responsible than you are for that?

Mr. RYAN. I don't know.

Judge HUBBELL. Well, I don't know, either. I am sure I do not see that it has any thing to do with this case.

Mr. ARNOLD. Is that question insisted upon?

Mr. RYAN. Yes, sir.

Q. Upon the argument upon the motion to dissolve the injunction, was the order vacating the injunction, and vacating all orders under the injunction, immediately made?

A. Yes, sir, before we left the court house. In fact, I never really finished my argument. The Judge interrupted me so frequently, and intimated his opinion so strongly, that I gave up, and the order to vacate was immediately entered.

Cross Examination.—Q. Was the injunction in that case granted by the court commissioner, Mr. Tenney? A. Yes, sir.

Q. When it came up first, on motion to dissolve the injunction, were you present?

A. I was present at the argument and at the disposition of it.

Q. Did the Judge state that that motion involved, as it seemed to him, the merits of the case and that he could not hear it argued during the jury trials?

A. I do not remember that, positively. It is not a remark, perhaps, which my attention had been called to. He might have said it. I think he did say, the motion involved the merits of the bill. There was no doubt, in any mind, about that.

Q. Upon the final disposition of this case, you say he interrupted you—did he not say farther, if the defendant had presented the bill, he could not have granted the injunction; and if he had known the nature of it, he would not have granted injunction?

A. Think he made the last remark.—He dissolved the injunction on grounds rising on the bill.

Q. Was the point, that the defendant had not shown in his bill a tender of the money due the defendant?

A. That was the point the Judge raised.

Q. Was not the burden of the solicitor's complaint, that his client had been kept under injunction that never ought to have issued.

A. I do not remember. The fact is, I did not give the argument of Mr. Watkins much attention.

Q. Why did you not take an appeal?

A. I think it was because I expected that Mr. Cook would be off before I could.

Q. Was not that security of Mr. Watkins given upon his professional honor, in open court?

A. I do not certainly remember whether upon his honor; but that is my impression. I knew that I thought if he was not able to do it, no honor would be security.

Q. Why did you discontinue this bill?

A. It was for the purpose of getting a *ne exeat* to prevent Cook leaving the State. I had endeavored to file a supplementary bill, but the Judge prevented. This proceeding was the last one but one or two of the end of the term.

Q. During the pendency of that suit, after the order was made for the issuing of the orders by the city, did the Judge speak to you about it, and ask you if it had been done?

A. I cannot tell whether he took the initiative or not; it might have been so Judge HUBBELL. Did I not speak to you two or three times upon the subject?

A. It may have been that you did. We had two or three conversations, and you manifested some anxiety upon the subject.

Q. In regard to sending the note from Judge Hubbell to the common council, did not the Judge tell you, that the common council would not issue the orders unless they had an order to do so?

A. I think he did not say unless they had an order. I think that he did say that they did not know whether Cook had a right to get them or not, and in order to facilitate the purposes of the order, he had addressed that note to them.

Mr. KNOWLTON. What was your understanding of the rule of law in relation to restoring that injuction, by appealing from the order dissolving it?

Mr. RYAN. I think the gentleman is asking the witness upon an opinion of law.

Mr. KNOWLTON. I only wish to know why he did not appeal; and I wish his understanding upon the rule, in order to get at the true reason of his not taking an appeal?

A. I had no positive opinion upon that point, and did not trouble myself to examine.

Senator CAREY. Is there any rule in the Circuit Court requiring notice to be served, upon motions to dissolve injunctions?

A. I should rather not swear to the rules in the absence of them. I believe, however, there is such a rule. I think I have so understood.

Mr. RYAN read from a pamphlet containing the rules confirming this opinion.

Mr. ARNOLD. The rule contemplates a case of special application made out of Court, not to the Judge but to the replieant. I ask the witness if it has not been the invariable practice in our Court when motions were made, that the counsel on the other side took them, and no written notice was given?

A. I cannot say. The understanding upon that motion was, that it should be taken up the next morning.

Q. That being done in open Court, and both parties being present, was not the notice taken as sufficient?

A. It was a sort of twenty-four hours' notice.

Q. Was it not the practice to send for counsel if they were not in Court when these motions were to be made, and especially when a contested motion was to be taken up? A. I think it was.

Mr. RYAN. You stated to Mr. Arnold that you discontinued this bill for the purpose of filing a *ne exeat*. Did Mr. Cook get away from you before you served it upon him?

A. Yes, sir! he did. I filed it on Saturday, and he left Sunday morning on the boat.

Mr. ARNOLD. Why did not the officer serve it upon him between eight o'clock and Sunday morning?

A. Well, sir, he said he could not find him; he said he thought he was concealed. That is all I know about it.

Senator BLAIR asked the following question:

Was it the practice in your Circuit Court to take up motions without notice, when there was any objection to either party?

A. No, sir! I think on objection of either party who have not had notice, the motion was held open until the other party could get notice. I think, however, it has been generally understood and practiced, that when a motion is filed one day in the presence of the parties, it is understood by the parties to be called on for hearing the next day, without any more formal notice. I am not certain where a party comes up the next day and objects that he had no notice, whether it would be proper or not.

Judge HUBBELL. The terms then were some five weeks of jury trial, were they not?

A. I should say about four weeks, though I do not remember positively. Every morning during jury trials was the time for making motions.

Judge HUBBELL. Was it not the universal practice not to stop a jury trial to have an old motion argued; was not that the practice during my presiding there, almost uniformly?

A. I think I saw sometimes an exception.

Judge HUBBELL, Was not that a practice adopted for the convenience of the bar?

A. I suppose so. It certainly served for the convenience of the bar. I think, however. these two motions were taken up after the jury trials had closed. I know I let the matter run along as near to the end of the term as I thought it safe.

Mr. ARNOLD. Allow me to ask you once more, why you did not take an appeal?

A. I did not deem myself secure without having Mr. Cook's body upon it, and when I became satisfied that I could not have that, I did not think it worth while to go on and incur the expense.

Mr. ARNOLD. One question in reference to your testimony yesterday, as to the verdict against the Milwaukee and Mississippi Railroad Company. Did you understand Judge Hubbell's remark to you in regard to that verdict, as being a direction to you what you ought to do, or as simply a suggestion to you, that if you would take $200, he would not disturb the verdict?

A. I should think I understood the latter—as a simple suggestion.

ALBERT G. KNIGHT was called, sworn and examined, to prove the judgment named in the specification one, article two.

Q. Are you Clerk of the Racine county Circuit Court? A. I am.

Q. Have you a transcript other and papers in the case of Taylor, against the city of Milwaukee? A. I have.

The papers were produced and read to the Court.

Q. Have you searched in the office in the County of Racine for a letter from Judge Hubbell in relation to this matter? A. I have.

Q. Have you been able to find it? A. I have not.

R. W. WRIGHT was called, sworn and examined in relation to specification second of article seven.

I reside at Waukesha. I am a lawyer by profession.

Q. Do you recollect the suit of Pratt against Cleveland, in the circuit court of Waukesha county.

A. I recollect such a case. I was present at the trial of that suit.

Mr. ARNOLD. You ask him if he was present at the trial. Won't you state which trial; there were three or four, I believe.

Q. Were you present at the trial out of which the indictment against Howe for perjury arose?

A. I was, sir. I was present at two trials—on the first trial and on the last. I was not aware that there were more than two. If there were three trials, I may not have been present at the last.

Q. Will you state what the controversy at that trial was in regard to a note having been attached to the same sheet of paper with a contract?

A. Well, the suit was brought by Geo. C. Pratt. The note was attached to the contract and made payable to Howe by Cleveland; and the defence set up, was, that the note when made, was attached to and made a part of a contract.

Mr. ARNOLD. I wish to suggest, if the counsel will permit me, that the

minutes of a trial taken so long ago, could not of course have been taken with a view to defend against an impeachment at this day. Judge Hubbell as every body knows, is in the habit of taking full notes of cases tried before him. This book of notes is here, and we would offer it to you if you would receive it to enlighten us as to the history of this case. The case I recollect, for I tried it, was a very complicated one, and the Judge's minutes would give a very complete history of it.

Mr. RYAN. Mr. President, I would state to the counsel that the Managers instruct me to say that they think it would be opening the door to a bad precedent in the case, to receive it. I have no reason to suppose the minutes would be unfair; but for the reason I have stated, the Managers instruct me to decline.

WITNESS. The defence set up was, that the note then made was attached to and made a part of the contract, of which the party claim to have a duplicate. It was a contract between Cleveland and Howe, entered into between them interchangably, and it was alleged that this note which was sued upon, was torn from the bottom of the contract; that it was of the same amount as a note of William H. Howe attached and making a part of the other contract. It was claimed that the note which Mr. Howe had was written on the bottom of his contract, and Mr. Cleveland's was written on back of his contract, and that the notes were not to be enforced against the parties, unless on certain conditions, and I recollect that it was claimed that the contract had been mutually abandoned and that of course the notes which were given as forfeiture notes, in the nature of a penalty were also abandoned. It was claimed that the note which was sued upon was torn from the contract after the failure to perform the contract, and that note passed into the hands of Mr. Pratt.

Q. Each party gave the other a note to the amount of $50, in the nature of a penalty attached to the contract?

A. Yes, sir; I would not be positive that the amount was $50. I think it was. It might have been $100.

Q. How came Howe to be sworn on that trial? A. I do not recollect.

Mr. ARNOLD. The witness is evidently laboring under a mistake, as you can see yourself.

Mr. RYAN. I do not see it, I am sure.

Mr. ARNOLD. I can correct him if you desire it, though it is not my business to help out the prosecution.

Mr. RYAN. I think we will go on awhile first.

Q. Did you hear Howe sworn? A. I did.

Q. How came he to be sworn.

A. I do not recollect whether he was sworn as a witness, or upon notice of the other party.

Q. Where did it appear upon that trial that the duplicate of the contract torn from the note was?

A. I do not recollect that it appeared at all. I saw that it was a claim set up by the defendant that such was the case.—Whether he got any testimony sufficient to show that or not, I do not now recollect.

Cross Examination.—Q. Was it not a contract about real estate? I am putting these questions to refresh your memory. Was it not a contract between Cleveland and Eaton? Was Howe a party to it at all?

A. My impression is that Howe was a party.

Q. You said you could not swear how Howe became a witness, I will open a way for you to see. Was not the note on Cleveland's contract the one which was signed by Eaton, while, on the contract which the other party had, the note was written under the contract. A. Yes, sir!

Q. Now, was it not contended also, with a view to trace this note, that it was driven into the hands of Eaton?

A. It is possible that the original contract may have been between Cleveland and Eaton, and that Mr. Howe acted in that matter as agent for Eaton; but, at all events, I am certain that it was set up in the defence that Howe was a party in the defence. My impression is, that Mr. Eaton sued. My attention was called to it from the swearing of Mr. Howe.

Q. Was it not a question in this case as to which party had forfeited the contract?

A. I stated that it was mutually abandoned or forfeited. I think Mr. Hawkins was engaged in trying that cause for the defendant. I think you, Mr. Arnold, were in the case.

Q. Do you not recollect that I was for the defendant?

A. I do not remember.

Q. Which suit do you mean to swear to that the indictment out of which the indictment for perjury grew?

A. I do not remember which suit it did grow out of.

Q. Do you recollect much about the proceeding at any rate?

A. I recollect that the matter of the original contract was impressed upon my mind from hearing the papers, and from examining some of them myself.

Q. Do you not remember this—that Howe being introduced as a witness, I put him through a severe course of cross-examination, with a view to draw out that this note was wrongfully cut off?

A. I do not. I recollect that he was cross examined in reference to the original transaction, but whilst he showed that Mr. Eaton was the party to the original transaction, I could not say I got the impression at the time that Howe was, but it is altogether likely I may be mistaken in that.

Q. I have asked you once if you can pretend to give an account of it, which you would say is reliable?

A. I could give no more than that impression, that Mr. Howe was an original party.

Q. Can you remember at this length of time what A, B and C said?

A. Probably not.

Q. Do you recollect that the jury did not agree?

A. I think that the jury failed to agree at the first trial.

Q. Had you forgotten that fact till I mentioned it?

A. I could not have told, I think, how the matter was disposed of.

Mr. E. HURLBUT was called, sworn and examined, in relation to the fifth specification of article nine:

I reside at Oconomowoc, in Waukesha county; by profession I am a lawyer.

Q Do you recollect an indictment for arson in the Jefferson county Circuit Court, against John and Gilbert Lane? A. I do, sir.

Q. Will you state to the Court when the motion was made or argued to quash that indictment?

A. I was not present at the trial. I got to the Court just as it was disposed of.

Q. Will you state what took place at the Court when you got in there?

A. I think it was the last matter disposed of, and the Court adjourned on the spot for dinner.

Q. Did you at any time, Mr. Hurlbut, hear Judge Hubbell make any remark as to the merits of that motion?

A. At the last term. At the term in which the indictment was disposed of, I was present.

Q. Well, prior to that? A. No, sir! I did not.

Q. Well, when the indictment was disposed of?

A. That was the October term 1851. The District Attorney, Mr. Dutcher, moved the cause for trial; and as it was called up, the Judge paused a moment, and said he believed Mr. Arnold was counsel for the defence. Mr. Dutcher said he thought he was. Judge Hubbell then said, he had promised Mr. Arnold that the indictment should be quashed, or told him that it should be quashed—and the indictment was quashed. Mr. Dutcher asked him then, upon what grounds he quashed the indictment. The Judge replied that he would tell him at some other time.

Q. Were you present in Court at any term previous to that term when the indictment was quashed, when the trial of the cause was pressed on?

A. I do not positively recollect whether I was present at the April term, and heard what was said relating to the indictment or not. I know I talked with the District Attorney about it. I am not certain whether I gleaned what information I had from him, or whether I had heard it in Court.

Q. Do you recollect any term when the indictment was pressed for trial, and the indictment was not forthcoming?

A. That was at the April term, previous to its being disposed of; I understood that the Judge had left it in Milwaukee.

Q. What I asked you was, whether you were present in Court when any thing about the indictment having been left in Milwaukee, was stated?

A. My impression is, that I was, but I am not positive whether I heard it stated in Court or by Mr. Dutcher at the time.

Cross Examination.—Q. Did you know the fact that the Judge did hold that indictment over to consult with the Supreme Court?

A. I understood that that was the object. I went down with the witnesses to try the cause at the April term. We could not go to trial, because of the absence of the indictment, and I am not positive whether Mr. Dutcher told me he left in Milwaukee or whether I learned that fact in Court. It had not yet been decided that the motion to quash would be sustained. I was in Court at the April term with the witnesses.

Q. What was the language made use of, in quashing the indictment?

A. I think I wrote down in a diary, that I kept, the exact language. I have not it with me. I know we thought it something very singular, and talked a good deal about it.

Q. You supposed he had made a bargain with me to quash that indictment, and was keeping his side of the trade? A. I do not know what I thought.

Q. Was not that really what you thought and talked about, that he was under bonds to me to quash the indictment?

A. I do not know that I thought that. I do not recollect what I did think.

Q. You thought it strange that after the lapse of a year he should say to me, that he was going to quash the indictment?

A. If he had told you so, I should not think it strange that he said so there.

Q. Were you examined as a witness before the Committee of the Hon. the Assembly last winter?

A. I was. I was subpoenaed by Mr. Brown, the special messenger.

Q. How did the question come up?

A. The question was put to me before the Committee. I do not think I had communicated it to any one, who would be apt to inform the Committee. I had talked about with my friends. At the election we talked about it.

Q. Have you been rather inimical to Judge Hubbell for a couple of years past?

A. As a Judge I have been unfriendly to him, and talked against him.

Q. Did you take offence at him once in the Waukesha Court, about the hand writing of somebody in a suit. A. I do not know that I did.

Q Did you not take it in high dudgeon?

A. I thought it rather ungentlemanly; but I was not much surprised at it, because I had known him before he came to Wisconsin.

Q. At the time the Judge decided to quash the indictment, did he say to the district attorney, that he had time to go before the grand jury and get another indictment if he chose?

A. I think not. The grand jury was discharged. I think he said if they were fearful that they would escape, he could have them arrested and bound over; but we had been to a good deal of expense, and we let it go.

Q. They were respectable men were they not in the community?

A. Well, perhaps they were.

William Dutcher was called, sworn and examined upon the same specification.

I reside in Jefferson county. I am an attorney at law.

Q. Were you district attorney of that county in 1851? A. I was.

Q. Do you recollect of an indictment for arson against John Lane and Gilbert Lane? A. I recollect it, sir.

Q. Were you present in court when a motion to quash that indictment was argued before Judge Hubbell? A. Yes, sir.

Q. What disposition was made of it at that time?

A. It was not disposed of at the time of the argument. The Judge remarked that it presented a new question to him—that he was not fully advised upon its merits, and he wished to confer with his associates upon the supreme bench in relation to it, and he would inform me of his decision in time to try it. I think, in relation to the first count, he had not much doubt, but he was not as fully satisfied as to the second.

Q. Did he state whether or not that first count was a good count?

A. I think he did not express himself fully in relation to it; but from some remarks he made, I supposed he intended to hold it good. I might have so taken his opinion from being a little anxious myself to sustain the indictment.

Q. Was that cause continued from that term?

A. It was continued to the spring term.

Q. Was the cause ready on the part of the prosecution for trial at the spring term of 1851?

A. It was ready for trial. The Judge took the indictment home with him, and stated to me that he would inform me in time to prepare for trial, unless

he thought of quashing the indictment; and at the spring term he told me that he had not the indictment with him. I went to his room with him and he could not find it. He told me, before he went there, that he had not fully made up his mind about it, and had not had an opportunity to present it to the Court to get their opinion. It was then continued until the next term.

Q. Did he at that time make any distinction between the counts?

A. I do not recollect that he said any thing about the indictment, further than I have stated, that he had not settled it in his mind. I do not think he spoke of any distinction at that time.

Q. Did he at that time, engage to give you any notice in regard to being prepared for trial at the next term?

A. I am not confident that he did, or that he said any thing about the notice at that time.

Q. Was the cause ready for trial at the October term of 1851?

A. Then we had a great deal of criminal business on hand, a very large docket; and when I got to the Court, I found Judge Howe upon the bench; by some arrangement that had been made. In order to save expense, I did not send out any subpœnas before the sitting of the Court, except in one or two cases, and during the first week, while Judge Howe was presiding, I had the subpœnas sent out. If my memory serves me, the indictment was there when the Judge arrived on the second week. He then informed me that he had concluded to quash the indictment. I do not know as I can recollect the language that he used, precisely; it was in open Court, and was in substance like this:—When the case was reached, I stated that I was ready for the trial, and he stated that there was something about that indictment that was not exactly sound. He said he believed Mr. Arnold was counsel for the defence; I said I thought he was. He said he had concluded to quash that indictment; that he should sustain it if he could do so; but not being clear about it he said he should quash it.—He said he did not know but the indictment was as good an one as could be drawn under that statute; but he thought it a doubtful question, and he had concluded to quash it. Mr. Arnold was not present at either term after the motion was argued. I think he stated to me that he had informed Mr. Arnold to that effect.

Amos Sawyer was called, sworn and examined in relation to specification one, article seven.

Q. Do you remember a foreclosure sale, upon some property in the city of Milwaukee, made in a certain cause wherein John F. Baasen, Le. Fevre, and others were complainants, and of which property Mr. Kilbourn became purchaser? A. I do.

Q. Do you know Mr. Mariner? A. Yes, sir.

Q. Do you recollect Mr. Mariner's coming to you upon the subject of holding a special term to confirm the sale of the mortgaged premises in that case?

A. Yes, sir.

Q. Did Mr. Mariner inform you of the fact that Judge Hubbell had refused to hold the special term? A. He did.

Q. Did you thereupon go to see Judge Hubbell? A. Yes, sir!

Q. Did you go that same day? A. I think I did.

Q. Will you inform the court what conversation took place between you and Judge Hubbell?

A. Well, I do not know that I could recollect the conversation, though, perhaps, I can the substance of it. I requested him to confirm the sale, and he said he would, and did.

Q. I wish you would state the substance of the conversation as near as you can recollect.

A. Well, that is a matter of some difficulty. The conversation was short, and I do not know as I could.

Q. What did you tell him?

A. I told him that I wanted to get possession of the mill; that that was all I had to do about it; that I could not do it until the sale was confirmed; that I felt anxious to get possession of the mill. I requested the judge to confirm the sale, and he said he would.

Q. What did he say in relation to Mr. Kilbourn?

A. I think he said he was not obliged to confirm the sale—it was a matter of favor entirely. Mr. Kilbourn had not used him well, and he did not propose to grant him any favors only as they came within his regular duties as Judge.

Q. Did he state how Mr. Kilbourn had used him ill, or had not used him well?

A. I do not know but he did; but I cannot remember that he did.

Q. Was there any conversation about the Jenny Lind Club in connection with Kilbourn? A. I should think there was.

Q. Well, just state what it was?

A. Well, sir, I could not do it. I think the subject was mentioned but I cannot recollect the words.

Q. Well, I do not want the precise words if you cannot give them; but what was the substance?

A. The substance was, that Kilbourn had considerable to say about the Jenny Lind Club—at least I think he said so.

Q. Was that assigned as one of the reasons why he would not hold a special term to oblige Mr. Kilbourn?

A. No! I do not know that it was, but that Kilbourn had taken a great deal of pains to injure him and use him bad; and I think the club was mentioned.

Q. Well, was there any thing said in regard to yourself by Judge Hubbell, of his willingness to hold a special term to oblige you, and of his reasons for being willing?

A. Nothing; only that we were old acquaintances, and that I had told him how I was situated, and he said he would hold it for me to accommodate me. Though he was not obliged to do it, he would to accommodate me.

Q. Was there any thing said by Judge Hubbell in that conversation about Kilbourn having opposed his election as Judge?

A. I do not think there was a word said about his election.

Q. Was any other instance mentioned of his having used Judge Hubbell ill besides what you have stated?

A. I do not know as there was, and I do not know but there was. My conversation with him was short; I was not over five minutes with him in the house. I do not know that any instance was mentioned, only that Kilbourn had been ugly to him and had used him bad.

Q. Did you state to Judge Hubbell in that conversation, whose interest it was, or whom it would oblige to confirm the sale? A. I did.

Q. You stated that it would oblige yourself and not Kilbourn?

A. I stated that in the end it would not make much difference with Kilbourn, and that it would oblige me as much or more than Kilbourn.

Cross Examination.—Q. You say he confirmed the sale—you mean to say he would hold a special term to confirm it. That is what you mean by confirm?

A. Yes, sir!

Q. Did you know that Judge Hubbell was holding a special term about every day at that time? A. I do not know about that.

Q. How far did you live from the court house? A. Some eighty rods or so.

Q. Did you apply in the evenings? A. I did.

Q. Had Mr. Mariner been then before you? A. I think he had.

Q. Was it not that Judge Hubbell refused to go down that night. Do you recollect of his saying, that he thought it would do if it was done the next day?

A. I did not request him to go down that evening, but the next day. I think there was nothing said about the time, but the judge said he would do it the next day.

Q. Did not the Judge say that it being in the evening, he did not feel under any obligation to go down to accommodate Mr. Kilbourn who had abused him?

A. I do not think he did.

Direct Examination resumed.—A. I do not know as the night was mentioned. My understanding about it was, that the next day he would confirm the sale.

Q. Was what he stated about not accommodating Mr. Kilbourn, in any way qualified by his saying any thing about his not being willing to go out of his way in the night?

A. I do not know that I thought or expected himto go down in the evening, and I do not know that he said any thing about going down in the evening.

Q. Do you recollect that he said to you that he had given general notice to the bar that he would stop at ten o'clock every day at the Court House, to transact the general business of the bar?

A. I think he said he stopped at the Court House every day as he passed by.

Senator WAKELEY asked at what time of the day did Mariner and yourself have this conversation, relative to the confirmation of the sale?

A. I think it was at my house, after dark, at early candle light, the same evening of the day of sale. I am confident it was after dark. It was the fore part of January or last of December. In fact, I know it was after dark, because I did not get home evenings till about that time.

Mr. MARINER was re-called, in proof of the first specification of article nine.

Q. Do you recollect of being present in the circuit court of Milwaukee county, at any time that the subject of a new trial in the case of Trentledge against the Milwaukee and Mississippi railroad company, was being considered?

A. Yes, sir.

Q. Will you state what took place there in your presence, and every thing connected with it?

A. It was in the morning, the hour for motions. I stood up by the desk in order to make a motion. There was a good deal of business to be heard that morning. I think Mr. Finch spoke of this case of the railroad company, and the Judge said he thought he should grant a new trial in that case. Mr. Doran then said he hoped his Honor would not, as he had some new authorities to present. Judge Hubbell said, the verdict was a large one, and if strawberry

beds were worth as much as the jury thought, we had better all go to raising strawberries. This conversation was in open Court.

Q. Was the order for the new trial entered immediately?

A. I do not know that it was. The Judge said he should allow a new trial.

Q. Did he, in fact, hear Mr. Doran's authorities? A. No, sir; not then.

Adjourned until afternoon.

AFTERNOON SESSION.

Dr. GREVES was re-called on specification four, article eight.

Q. Are you acquainted with Mrs. Sarah Pope? A. I am, sir.

Q. Do you recollect when she was applying for a divorce from her husband?

A. Yes, sir; I recollect the time of her applying for it.

Q. Had you any agency in appointing a meeting between her and Judge Hubbell? A. Yes, sir.

Q. Will you state what it was, and when it was?

A. Well, I declare, I cannot name hardly the month or year. I have not given it a thought in a long time. I shall have to think awhile. I think it must be two years this coming fall. I have that impression.

Q. Will you state what your agency was in relation to a meeting between her and Judge Hubbell?

Judge HUBBELL. Mr. Ryan, can you not get at the time; I should like to have that settled first.

Mr. RYAN. That is what I have been trying to do.

Witness. It was the latter part of the summer, 1850; that is my impression.

Q. Will you now state what agency you had in bringing about the meeting?

Mr. ARNOLD. And, Doctor, in doingthat, I wish you would confine yourself to the question, and not relate what others said.

Mr. RYAN. Mr. Arnold, I would suggest, that if Dr. Greves received any suggestion from any one, to procure that meeting, and mentioned that suggestion to Judge Hubbell, I take it that it is proper and legitimate that the witness should state it.

Mr. ARNOLD. That might be proper, after you have shown that that meeting was procured and did take place.

Q. Did you see Judge Hubbell in relation to an interview between him and Mrs. Pope? A. I did.

Q. Will you state what you told him at that interview?

A. I called on Judge Hubbell in the afternoon of a certain day, and named to him that Mrs. Pope, (then Mrs. Campbell,) wished to have an interview with him, in relation to some business, and wanted to have him fix the time. He told me that he would be in at five o'clock in the afternoon, and then again at seven. I was intending to accompany her, if she went at the latter hour.

Q. Did you tell him what business she desired to see him upon?

A. I do not recollect as I did. I might or might not. I knew her business only from what she said.

Q. Will you now state whether Mrs. Pope had authorized you, or directed you to make that solicitation of Judge Hubbell? A. Yes, sir; I did so.

Q. Did you communicate to her Judge Hubbell's answer? A. I did.

Q. What was Judge Hubbell's answer?

A. As I before said; he fixed the time he would see her, at five o'clock or at seven.

Q. Did you communicate that to Mrs. Pope? A. Yes, sir.

Q. Did you make any appointment with Mrs. Pope to accompany her?

A. I did if she went in the evening at seven o'clock.

Q. Did you go to her residence at that time?

A. I went between six and seven for the purpose of accompanying her if she had not been, but she was not at home.

Q. Did she return home while you were there? A. She did.

Q. Did you see her when she returned? A. Yes, sir.

Q. Will you state to the court what condition she was in when she returned home?

Mr. ARNOLD. That I object to.

Mr. RYAN. I think it is a competent question.

Mr. ARNOLD. Well, reduce the question to writing. Mr. President, the objection is, that the interrogatory is irrelavent. The charge to which this testimony is directed is that of prostituting the office which the judge held, to induce females to submit to debauchery, and no proof has yet been adduced that Mrs. Pope had an interview with Judge Hubbell at all. The proof only goes to show that Dr. Greves, the witness, at her solicitation, sought an interview; that he spoke to Judge Hubbell upon the subject; that Judge Hubbell said he would be at liberty to see her at a certain time; that he, the witness, agreed to accompany her if she waited till seven; that he called upon her between six and seven and found her not at home, but she soon returned. Now, in all that there is no proof of any interview between her and Judge Hubbell; and so what her appearance was seems to me no more relevant than the appearance of the Dcotor himself. She might have been agitated; she might have seen some frightful object; she might have been out in a rain storm, as the Doctor himself has, and he came in just now quite agitated. Now Mrs. Pope herself is the best witness to the interview, if there was one; and why she is not here I do not know; and whether she is under subpœna, I do not know.

Judge HUBBELL. If you can prove any thing done between her and me, about her leaving the State, you are welcome to read to the Court the testimony she gave before the Committee.

Mr. RYAN. I think the question is perfectly proper and relevant. I had proved by the witness, an appointment for an interview about that time; the witness was not present at the interview, and cannot testify to it; witnesses are seldom present at such interviews. I asked the witness if he went to accompany her at the appointed hour; he states that he did, and found her gone. I then asked if he was there when she returned home; he says he was, and saw her. I then propose the question, in what condition the woman then was, when she so returned home. Now, Mr. President, we have to give, as every other party has to give, *some* part first. The witnesses cannot all come in precisely logical order; that is impossible; one witness would have to be placed upon the stand, and then replaced by another before his testimony was out. We should have to come at a single item at a time, for the purpose of dove-tailing the statement into logical order. That is never required in any Court. I state to the Court that I believe this testimony is material; it is not of any very great consequence to us, whether this question is put now or at a subsequent time; but we

propose to follow it up with proof of that interview which took place, from which the Court is at liberty to infer that the woman then immediately returned; and we will further prove, that on Monday, after the service of subpoena on her, the woman left the State.

Mr. ARNOLD. Mr. President, will the counsel now mark what I say. I will state to the counsel that if he will prove any interview between Mrs. Campbell and Judge Hubbell, he may ask the question; or if he will state upon his professional honor, that any such interview did take place, he may ask the question; and you may also read the testimony before the Committee.

Mr. RYAN. My professional honor is no more than my word. I have stated already that I am convinced that that interview did take place.

Mr. ARNOLD. In the way in which this question is put, you may prove an interview between Judge Hubbell and all the women in the State.

Mr. RYAN. Possibly.

Mr. ARNOLD. Well, if you will prove directly or indirectly, an interview with any woman, for the purpose of inducing her to submit to debauchery, you may go on with the question.

Mr. RYAN. I will state one thing farther—the question applies not only to the specification four, article eight, but also to specification twelve, article ten.

Judge HUBBELL. Mr. President, I am too much interested in the position in which the proceedings of this body and of another body have placed me, to be permitted as a father, as a husband, as a civil officer, to sit quiet under these proceedings. I am charged with having "used my judicial station and influence for the purpose of inducing females to submit themselves to be debauched, contrary to public decency, and to the manifest corruption and scandal of the administration of justice." To that charge I have to say, that if that female, whom I never saw but once, and that by her own procurement, and not in the way I had appointed, (which was as this witness will testify, in company with himself) if, I say, the Honorable Assembly of the State have extracted from that female, by their committee sitting in private, as a secret tribunal, in my absence, any proof that I made any advances or solicited any favors whatever, in return for which I was to prostitute my office, to make any decision, good or bad, right or wrong, they may read that evidence to all the world. But, sir, if there has been no such evidence drawn out by that secret committee, if there is no such proof of such proposition made, when this woman thrust herself into my presence alone, after being permitted to come with her friend, and her friend only; and if this charge has gone to the world against my family, against my office, and against the honor of this state, without proof, shall this Court be outraged by a proposition of this sort, made by the Committee of Managers, under a pretence th t they are going to prove the main charge at a future time? Shall this be done when they know themselves, that if she did have the interview, there was not in her testimony a single fact that would tend to prove improper conduct on my part? Whose name would not be blackened, whose reputation would not be lost, if, after an interview procured in that way and yielded to in that way, testimony was to be received as to what somebody had said of that interview?—some stranger, it may be, some woman, perhaps lost to all character, perhaps having a purpose of her own to accomplish? I say whose character would be safe, if her declarations were taken as proof—not of guilt—but of infamy? I stand here to defend

myself against the charge, and the charge only; and I here say, that the charge preferred by the committee cannot be sustained by the oath of any witness. Shall this Court, sitting in the name of the state, at the expense of the state, and with the power of the state, exercise its high prerogative for the mere purpose of publishing scandal, the scandal propagated by this, for aught I know, wicked and false woman? Shall the Court sit here with the power of the state, and take as competent evidence, her declarations, made not on oath, not in my presence, and which would not be taken as proof in an action to recover ten dollars on a promissory note? I take it the rules of law are to prevail here. Sir, the individual who stands here, under this accusation, has rights, reputation and character, that are as dear to him as the rights and character of the Assembly, or the prosecuting committee, are to them. His upright character has been the idol of his life; and shall it be cloven down in the name of justice by the reported declarations of a foolish, false-hearted, or interested woman?

The question "shall this interrogatory be put to the witness?" having been put, it was decided in the negative.—Ayes 3; noes 21.

Cross Examination.—Q. One question, Dr. Greves, when you solicited this interview for this woman with Judge Hubbell, did you not meet him in the street?

A. I do not know, sir. I know I saw him and had the interview with him.

Q. Did you not, in introducing the subject, ask him for liberty to call with a friend?

A. I do not so recollect. I might have done that at first; but I think I named her afterwards. I know I mentioned who the individual was who was to call.

Q. Was it not the calculation that you would be with the person?

A. Yes, sir.

Q. Did you not ask to bring a friend down to see him?

A. I think, very likely, I did.

Q. Was not the Judge's answer, that you might if you accompanied her.

A. Yes, sir. I have no doubt he supposed I would come with her; and I was intending to come. I did not think she would leave till evening, although I told her he could do as she chose.

Mr. Ryan. Where is Mrs. Pope now? A. I do not know, sir.

Q. Is she in this State? A. I do not know, personally, about it; I know no more than others know.

Mr. Arnold. Do you know whether she was acquainted with Judge Hubbell before that appointed interview?

A. I have no doubt that she did not know him then; indeed, I am sure she did not.

Mr. Ryan introduced and read the record in the divorce suit of Sarah Campbell vs. Charles R. Campbell.

Francis Randall was recalled.

Q. Do you know Mr. Sarah Pope? A. I know her.

Q. When and where did you last see her?

A. I saw her on Tuesday morning, week before last, on the cars at Adrian, in Michigan.

Q. Did you leave Milwaukee on the same steam boat?

A. I left Milwaukee on the steam boat, on Monday, the 6th of June, and I found her on board. I took the cars at Chicago, and saw her on the cars.

Q. I suppose she went on eastward from Adrian?

A. I have not seen her since.

Q. Did you at any time have a conversation with Judge Hubbell in relation to any interview between him and Mrs. Pope? A. I did.

Q. Will you state to the Court when and under what circumstances it occurred?

A. It was in September, 1851, shortly before the judicial election. I recollect the date, because, having been east, I returned on the 25th of September. I went down to the United States Hotel; I found Judge Hubbell, with some gentlemen, there. I recollect that one of the gentlemen present was Mr. John Mason. When I went in it was very apparent that there had been a conversation going on in the room relative to the election. Judge Hubbell went on with the conversation, which was evidently a continuation of some conversation upon that subject. He was speaking of some allegations which had been made respecting him in that canvass, which he said were false. And I made this remark to him—"Well, Judge, there is one story which I have heard about you, which, if true, is a disgraceful one." I then told him what I had heard, in regard to himself and Mrs. Campbell. He denied the truth of the allegation. He said that Dr. Greves had met him in the street and told him that Mrs. Campbell wanted to see him about a divorce; that he made the appointment at four o'clock—as I recollect the hour—that he went down to his room at the appointed time, and at a much later hour than that—somewhere about dark—while he was lying upon his sofa, fatigued, as he said, by the labors of the day, he heard some one rap at the door; he bid them come in, and a woman came in. I believe he said he did not know who she was, or during the conversation he said he did not know her; he said he did nothing any more than a priest might do; that she sat down upon the lounge upon which he had been lying; that she told her story; that she appeared agitated, and gave an incoherent account of her troubles. He told me that while sitting there, he put his arm around her and drew her up to him, and she said—"I am not such a woman," or something of that kind. He said he replied to her—"do not be alarmed—I intend no wrong." He said that she appeared very much agitated; that he had a good deal of difficulty in getting out her story, and after being there a while, she went out; bid him good evening in a usual manner, and did not appear to entertain any sense of insult; and then as he had understood, she had gone abroad and told a false tale.

Q. Did Judge Hubbell explain, in his statement, on what subject she told her story?

A. Well, sir, my recollection is not positive, whether or not the Judge said itwas about a divorce; or whether that impression is in my own mind from having heard that she consulted him about a divorce. My impression is, that it was about a petition for a divorce. I may have confounded the two; my recollection is indefinite about that.

Judge HUBBELL. I wish you would refresh your recollection.

Witness. I have tried to, sir.

Mr. RYAN. Mr. Arnold, I propose to prove by the witness, as a declaration accompanying an act—or rather I propose to ask him a question whether, when he was traveling with Mrs. Pope, she told him she was going to be gone during this trial.

Mr. ARNOLD. It is objected to.

Mr. RYAN reduced the question to writing as follows:

"Did Mrs. Pope tell you when traveling with you from Milwaukee, where she was going, and for what pupose, or for how long?"

Mr. ARNOLD. It is objected to for the same reason as the last question—that is, it is irrelevant. It is in no way connected with the conduct alleged against Judge Hubbell in this specification; and for another reason still—because the testimony being irrelevant, would perhaps convey a wrong impression, without giving us the power or the ability to correct it. Now I might with as much propriety—and I offer it not as testimony, if the gentleman should wish to draw it out—to ask if she were coming to Madison to be examined as a witness. It appears to me it would be just as potent to prove what is true, that being next door neighbor of mine, she has repeated to me, that her testimony would not do the least hurt to Judge Hubbell; on the contrary, it would be in his favor, and all that. Now, I think that would have no more to do with the charge, than this evidence that is sought from the witness who traveled on the cars with her, would have to do with it. If the counsel intends to prove by it that she was spirited away by Judge Hubbell, whether it is any evidence or not of the truth of the charge, I withdraw the objection, and he may prove it.

Mr. RYAN. I do not propose to prove it.

Judge HUBBELL. You mean to insinuate it.

Mr. RYAN. No, sir, I do not intend to insinuate it; I make all my statements openly and boldly. I never had any interview with the woman only in the committee room.

Mr. ARNOLD. You had the interview in the committee room, and the Judge in his office; that is the difference.

Mr. RYAN. I had the committee to protect me, Mr. President. The counsel has represented here what he has heard Mrs. Pope say. The defendant has hinted somewhat upon the subject matter of her deposition, and says he is willing it should be published to the world. I did not know that that offer was going to be made at that time; I know nothing of what occurred with Mrs. Pope in any manner whatever, except what she testified to, that we would be glad to offer to the Court. In regard, however, to the relevancy of this question, Mr. President, we wish to prove what we are able to prove, that on the very day this Court convened by adjournment, Mrs. Pope left the State. She travelled as far as Adrian, Michigan, and apparently travelled farther eastward. Now, I do not intend to give it as proof of any collusion whatever. The Managers concluded to offer the proof for the sole purpose of accounting for the non-presence of the witness. We have proved that she travelled to a certain point eastward; we propose to prove, and account for, her continued absence. We propose, simply, to obtain her declaration, that she was going to begone during this trial. Now, Mr. President, I suppose it to be a well established rule, that whenever you are entitled to prove an act, you are entitled to prove a declaration accompanying the act, as accounting for the extent of the act. The books say, such declarations are verbal acts; and that whenever you are entitled to prove an act, you are entitled to prove the accompanying declaration of the act, for the purpose of proving the extent and scope of the act. We offer to prove that she went away for the purpose of being absent from this trial, and that she is still absent.

Mr. ARNOLD. But here is the important distinction—the general principle that the gentleman has announced is true; but then the act sought to be proven must be pertinent to the issue that is before the Court to be tried. But here the charge is, the prostitution of his office for the purpose of inducing females to submit themselves to debauchery. Now, pray, what has her absence, or the reason of her absence, to do with the guilty conduct, or innocent conduct of Judge Hubbell in view of that charge. As I said before, if the gentleman offers to show any misconduct on the part of the respondent in enticing her away, I will allow it; but if not, then I object to the question.

Mr. RYAN. One word with regard to the relevancy of this question, which I forgot when I was up before. I assume, and I have no doubt I safely assume, that if we do not account for the absence of this witness, it will be commented upon by the defence. Here is a charge, they may say, which, if true, we could prove specifically by this witnesses, and we cannot prove it specifically by other witnesses. We propose now to prove the absence of this witness—a thing that is done every day—for the purpose of producing inferior proof.

The question, "shall this interrogatory be put to the witness?" having been put, it was decided in the negative.—Ayes 5; noes 19.

Mr. ARNOLD. With permission of the Court, I will now say to the counsel on the other side, if they will submit to me the testimony of Mrs. Pope taken before the committee, and I can find in it any statement, any testimony, which shews that Judge Hubbell in talking with her, made to her any proposition, directly or indirectly, for the purpose of debauchery and the prostitution of his office, I will pledge you my word that I will permit you to read the whole testimony to the Court.

Mr. RYAN. All that provides for a great deal of construction which the counsel reserves to himself. I, myself, think, the committee of Managers think, and the Assembly think, the testimony sustains the charge. The counsel might very readily take a different view of it. We are willing to read it; if it does not prove the charge, there is no harm done; if it does prove it, it only comes within the category in which the gentleman has placed it. It either proves the charge, or it does not prove it. We would rather decline, on the whole, out of deference to all parties, and a feeling of delicacy to all concerned, the gentleman himself included, to read it.

Mr. ARNOLD. Oh, don't decline on my account. Of course, we could not permit you to do as you now propose, for the reason that we have taken up some time in rejecting irrelevant testimony, and we would not wish to appear in the ridiculous position of consenting to read irrelevant testimony now.

Cross Examination.—*Q.* In the interview of which you testify, did Judge Hubbell express surprise at seeing a woman enter his office at that hour.

A. My impression is, that he said he had forgotten the appointment to meet Mrs. Pope, and that he expressed some surprise at seeing a woman when she entered. The arrangement, he said, had been for an interview in the afternoon, at four o'clock.

Q. Permit me now to ask, in regard to the situation of Judge Hubbell's room, where this interview took place?

A. It was in the United States Hotel. From the south side of the building, there is a long hall running north through the block; and at some distance

from the south side, there is a side hall running to the east side of the building, and opening out on the yards of the rear building. Judge Hubbell's room was in that side hall, and another into his room proper. You open a door out of the main hall into a side passage. I think there was no door, unless folding doors, between his rooms.

Q. Was there not out of this hall a downward stairway, so that you can go through Peck & Baker's store, as well as into the hotel?

A. I believe there was.

Q. Do you recollect of Judge Hubbell telling, in his account of this interview, that he staid, and kept staying, an hour after, telling over the whole history of her life, and of her husband's affairs?

A. No, sir, I do not recollect that, nor that he said how long she staid.

Q. Did he say any thing about the advice he gave her, that she had better take her case to a lawyer. A. No, sir.

Dr. GREVES recalled.

Q. Do you know whether at the time of this appointment and interview to which you have testified, she had actually commenced proceeding in this matter of divorce.

A. I do not know that she had; I did not know that she was applying for divorce till she spoke to me about going to Judge Hubbell. I only know that she had a lawyer from what she said.

Mr. RYAN. Mr. Arnold, I now renew the question, which was ruled out before.

Mr. ARNOLD. It is objected to.

Mr. RYAN. We have given some proof as we stated we would of that interview. I have accounted for the absence of the main witness. We have proved, Mr. President, now, that an appointment was made for an interview, and we have proved that an interview took place, not exactly in compliance with that appointment, but it took place that same evening. We now propose to show the condition of that woman, Mrs. Pope, on her return from that interview. I suppose, Mr. President, whatever doubt may have existed in the mind of the Court, about the propriety of the question before, there can be no difficulty about the propriety of the question now. I suppose, sir, in every case where the personal appearance of an actor in any transaction, is necessary to be proved, that the appearance may be proved. If it is alleged that a particular interview took place between A and B, and that A committed an assault and battery upon B, you may prove the personal appearance of B, immediately succeeding the interview. It is a common order of proof, that wherever a personal violence has been perpetrated upon an individual, you may prove the appearance immediately succeeding the time of the occurrence. So, sir, with regard to other matters. It is a matter of common, daily proof in courts of justice, that where the feelings are affected, you may show the state of feeling when a transaction is alleged to have affected the individual one way or the other. You may show that a person who is alleged to have received an outrage, to his or her feelings, was perfectly cool and collected afterwards, which tend to show that he did not receive the outrage, or that he was agitated or confused, or indignant, as the case may be, which would tend to show that he did receive the outrage. Here in this very Court, in this very cause, we gave proof of that character which was not objected to. We proved the confusion of Mrs. Howe in her interview with

Judge Hubbell at Waukesha, and that is competent proof. It is competent to show here, the condition and state of feeling of this woman immediately after that interview. Suppose this was not a Court of impeachment, but an ordinary tribunal, and this interview was alleged between A and B, and B was alleged to have done any act towards her, which was an outrage upon her feelings, it would surely be competent to show that her feelings were agitated afterwards, as it would be for them to show, if they could, that they were calm and unagitated. Mr. Arnold has himself pretty much defined that position, when he showed that she left the room, where she had the interview, in an unexcited and ordinary manner; bidding him good evening in the usual manner, would be evidence showing that there was no wrong done to her feelings, whereas agitation and confusion would be evidence to the contrary.

Mr. ARNOLD. Mr. President, I still insist upon the objection, although it may seem like unnecessarily consuming the time of the Court. I do not propose to come here to be tried upon irrevalant testimony, and mere suspicion, and although I am aware that this question could in no wise affect the respondent, we must object to it mainly with a view to save time, though, I must confess, it appears to be a failure as to saving time. Now the simple ground of objection appears to be this: does the interrogatory tend legally, by the rules of evidence, to establish the fact set forth in this specification? Would it have any proper, legal bearing to establish the proposition, that Judge Hubbell had used his judicial station for the purpose of inducing females to submit to debauchery? She may have been terrified in coming down the hall, if it is shown that she came down agitated; or something else may have occurred to have disturbed her.

The counsel will no doubt reply to this proposition by saying, that she said something, and that the following question would be: What did she say? To that I should object, and it would have to be ruled out. I think it best, therefore, to insist upon the objection.

The court again rejected the question; 16 voting in the negative, and 8 in the affirmative.

Cross Examination.—Q. During last winter, when this matter of impeachment was pending before the committee of the Assembly, did Judge Hubbell request you several times to see Mrs. Pope, to ask her to come before the committee; or, perhaps, I ought to precede that with another question—whether it was rumored she would not come before the committee.

Mr. RYAN. Mr. Arnold, will you explain the relevancy of that question?

Mr. ARNOLD. Well, I do not know as I can.

Mr. RYAN. Well, if you do not know as you can, I object to the question. I owe you an objection.

Mr. ARNOLD. Then I will not press it, if you do.

LEANDER WYMAN was called, sworn, and examined, in relation to specification three of article two.

Q. Mr. Wyman, were you commissioner of the circuit court of Milwaukee county in the case of Miller against Hubbell? A. I think I was.

Q. Did you make the sale? A. I did.

Q. Before you made that sale, had you any conversation with Judge Hubbell in relation to the sale of the property?

A. I never did, directly, with him before the sale.

Q. Did you afterwards?

A. I did. Judge Hubbell came into the office some two or three days after the sale, or perhaps the next day, and I had made out the deed. He looked at it and made some suggestion about it. I do not now remember what; something about its not being made out in the right kind of shape; and perhaps saying how it should be made out.

Q. Who paid you the purchase money on the sale?

A. I never actually received the purchase money. If I understood the case, there were two mortgages—one of them foreclosed. I got a check and paid that amount to Mr. Finch. On the other, the ballance of the purchase money did not come into my hands directly.

Q. Who paid you the amount which was going to Finch & Lynde's clients?

A. I will not say positively. I think I got a check from the Judge; I cannot say positively.

Judge HUBBELL. I admit the amount of that mortgage and the foreclosure and the amount paid on the purchase made by Henry P. Hubbell.

Q. In whose name was the check you speak of?

A. I think it was the Judge's check.

Judge HUBBELL. I admit further that Henry paid part of the purchase money and I paid part.

Q. Did he say who would be purchaser at the sale?

A. I think he said that; but not to me. I think I heard him say that Henry P. Hubbell would bid at the sale of Mr. Downer.

Mr. E. MARINER recalled—to specification four of article nine.

Q. Did you know the cause of Hungerford against Cushing?

A. Yes, sir. I was one of the solicitors for the defendant.

Q. Did you in January last go to Judge Hubbell on the subject fixing the amount of an appeal bond in that case?

A. I did. I went to the Judge on the morning of the fifteenth of January. I told him I wanted him to fix the amount of an appeal bond entered upon an order against Mr. Cushing in the case of Hungerford vs Cushing. He looked at me a moment and said he did not understand me. He asked me what order I meant. I told him the last order made, giving possession. He asked me when the order was made. I told him I did not know when it was made; we had not had any notice of it; but Mr. James had telegraphed me from Madison, to get the amount of the bond fixed. He sat a few minutes and said he did now what the effect of the appeal would be. Then he said something to this effect: that that was the way things went! that he had been more the friend of Mr. Cushing than of Mr. Hungford; that if they continued the suit longer they had got to fish or cut bait, and that if Judge Miller went on with that suit he would enjoin it. He then said again he did not know how much to fix the amount of that bond. I told him it was important to be done immediately; it was among the last days of the term, and I supposed I should have to go to Madison with it that day. He wrote the order and I came away.

Q. Have you got the order? A. I have.

The order was produced and read to the court as follows:

Dane County Circuit Court,
In Chancery. } William S. Hungerford, vs. Caleb Cushing.

The defendant in this case having applied to the undersigned for an order designating the amount of penalty of the bond to be given by him in case he

shall appeal from an interlocutory order entered in this cause on the 31st day of December, 1852. I do hereby order and determine that such bond be given in the penal sum of ten thousand dollars.

At Chambers,

January 15th, 1853.

LEVI HUBBELL.

Cross Examination.—*Q.* When you went to get the order, did you convey any idea that it would affect any other suit?

A. I did not undertake to convey any idea about it. I only said I had seen a copy of the order. He did not know when the order was granted. I did not state a word about the substance of it. When I first met him, while I was on the stairs going up to his room, I told him I wanted to get an appeal bond, or order, fixing the amount of the bond as required by the last order.

Q. Were you and he, then, talking about the amount?

A. That is what I asked him, what the amount would be? We had no conversation about the amount. I did not say anything further, excepting that the order was in relation to the balance of the property; and all I know about it was, that there was a copy of it filed up then in the United States Court which I had seen.

Q. Do you not recollect that Judge Hubbell, in that conversation, beside saying that he did not know what the effect of the appeal would be, said he did not know what the amount must be put at?

A. I do not remember that. I supposed it was because he did not know what the effect of the appeal would be, created a difficulty in his mind about fixing the amount; but I do not remember his saying so, or any thing about it.

Q. The suit you allude to was an action of ejectment, was it not?

A. Yes, sir.

Q. He said if Judge Miller persisted in trying this suit he would enjoin him, conflicting directly with the order? A. Yes, sir.

Mr. RYAN. I wish you to explain what I thought I understood you to say, with regard to somebody having to fish or cut bait. Who was it that had got to fish or cut bait?

A. The remark was, that he had been more friendly to Gen. Cushing than to Mr. Hungerford; but if the defendants went on in this way, they had got to fish or cut bait, and that if Judge Miller proceeded with the suit, he would enjoin it.

Mr. ARNOLD. I thought that phrase meant going from one Court to the other.

Mr. RYAN. I have come across the expression before, and I must say I don't know precisely what it means.

Mr. ARNOLD. I forgot to ask you, Mr. Mariner, when you called to get the amount fixed, you told him you wished the order made instantaneously?

A. I did. When I went to see Judge Hubbell, he was shut up in his office writing out some decision, I suppose. I pounded away at the door below for some time. He told me I could not get in. I told him I should, as I had a matter of business that must be attended to immediately.

(The records in the suit of Hungerford *vs.* Cushing, were here introduced and were about to be read.)

Senator DUNN. I would enquire of the Committee of Managers if they pro-

pose to read the whole record in the case of Hungerford vs. Cushing? I would make a suggestion, if permitted, without, however, intending to interfere with the course prescribed—by way of saving time—and that is, that only such parts of the record be read as are necessary to illustrate the charge to which it must apply. It certainly must be obvious that three fourths of these records if they are read entire, can have no particular application to the charges, and cannot tend to illustrate them in any way. I hope the suggestion may be taken by the Court, and all concerned in conducting this case, and that those parts only may be read which are relevant.

Mr. RYAN. I would say in response to the suggestion to the Hon. Member of the Court, that it has been the aim of the Managers and myself not to detain this court unnecessarily by reading records. We may have read such parts as were not material, but it would have cost more time to pick them out, and avoid them, than to read them. In this case the allegation is that after the decree of the supreme court in the case of Hungerford vs. Cushing, Judge Hubbell was retained as the counsel of Hungerford, upon an indictment in the United States District Court for this district, growing out of the same controversy, and involving in part the same conclusion in law, and fact, as in the cause in chancery. I suppose the dispute between us will be whether the indictment in the civil suit did involve the same conclusions of law and fact. Now without reading the issue it would be exceedingly difficult for us to say how much we ought or ought not to read. It will be for this court ultimately to say whether the two indictments did in fact involve the same conclusions of law and fact. I was not engaged in the suit and am not very familiar with it. In order to read it I procured a copy of the book of printed records connected with the case which make a book as large as a respectably sized novel.

Mr. KNOWLTON. And more *novel* than any thing else.

Mr. RYAN. It is possible that counsel on both sides might sit down together and agree how much of the civil suit must be read.

Senator DUNN. In reply to the counsel for the managers, I will state that I have some intimacy with this case, having been a counsel for one of the parties and that it will be found by the court and persons concerned that reading the bill, the deed of trust accompanying it, and the indictment embracing the charges against Mr. Cushing will present to the consideration of the court every thing that is material to enable them to come to a conclusion upon this whole charge. If, however, after this is done, the court or the managers or counsel for the respondent think there is any thing else that should be read, then it might be done; but I apprehend every one would be satisfied with the reading of the papers I have indicated.

(The reading of the records was proceeded with for some time when the court adjourned till the next morning.)

FIFTEENTH DAY.

THURSDAY, June 23.

MORNING SESSION.

Mr. RYAN. Mr. President, Mr. A. Hyatt Smith wishes to make a correction of his testimony as given on Tuesday last.

Mr. SMITH. I wish to correct that part of my testimony in which I stated the time of the declaration made by Judge Hubbell on the bench in relation to his view of the case. On reflection, I am satisfied in my own mind, as to the time that declaration occurred. I stated that it was on exceptions to the second answer; while the fact was, it was on exceptions to the first answer and not on the second.

I will further state, that Mr. Collins was not the counsel for the complainant, but Mr. Knowlton was counsel. Mr. Collins I think, had not at that time come into the case.

Mr. KNOWLTON. Do you remember whether Colonel Botkin was present.

A. I do not. I think the bar generally were present.

Q. Do you recollect whether that remark of Judge Hubbell came upon some suggestion on our part when he said he would decide that the exceptions to Rantoul's answer were bad in form.

A. It has come to my mind, I think, precisely as it took place, since I have had an opportunity for reflection upon it. It was in this way—I was arguing the exceptions to a particular part of the answer, and Judge Hubbell stopped me in the argument and put this question to me—"Mr. Smith, do you call that an answer to this bill?" My answer was, "I do." His reply was—"It is not an answer to the bill, and I am satisfied that General Cushing cannot make an answer to it. I believe the thing is a fraud from beginning to end." That is the way the thing came up, and that is the language precisely as near as I can recollect it.

Q. Do you recollect a remark of the Judge, that in case Mr. Cushing failed to make a complete answer, it was quite immaterial whether his understrappers could or not?

A. I recollect something of that kind. When Mr. Rantoul's answer was over-ruled, he did make the remark you have mentioned—that it was immaterial; since Mr. Cushing could not answer, it was no matter whether his understrappers could or not.

Q. Was it not to that remark that you replied that he had prejudged the case.

A. No, sir, that was a different affair.

The examination and reading of the papers in the case of Hungerford vs. Cushing was then continued.—The bill, the two answers of Mr. Cushing, the exceptions to the first answer, the deed of trust, and the indictment.

ALEXANDER COOK recalled, to the fourteenth specification of the tenth article, and the tenth specification of the eleventh article.

Q. Do you recollect a prosecution against Jehiel Smith for adultery?

A. I do. I was District Attorney for Waukesha County at that time, and conducted the trial under the indictment. The trial was in Milwaukee county.

Q. Who presided? A. Judge Hubbell.

Q. During the progress of that trial, and before its conclusion, had you any conversation on the subject of the trial with Judge Hubbell?

A. I did, after the testimony was closed, and before it was summed up.

Q. How did it come about?

A. Judge Hubbell called me to his desk after the whole testimony was closed; he told me that during the recess of the court for dinner, Pete Jones, meaning, I suppose, Peter G. Jones, of Waukesha, had called upon him; that he had so

me conversation with him; that Jones had testified to something in regard to the girl-witness on the part of the prosecution; that Jones told him that the girl had formerly lived at his house, and he had discharged her; and he advised me to enter a *nolle prosequi* in the case.

Q. Did he assign any farther reason?

A. Nothing farther than the conversation with Jones about the character of the witness; and I do not recollect particularly that there was any thing farther said about the character of the witness. I did not enter the *nolle prosequi*.

Cross Examination.—Q. Who tried that case for the defendant?

A. Mr. Crocker and Mr. Arnold.

Q. Was it not your impression, while that case was pending, that there was nothing in it?

Mr. RYAN objected to the question.

Mr. ARNOLD. I wish to show that it was really a malicious prosecution, and that the district attorney had always so felt and said, and had never thought that there ought to be a conviction in the case.

Mr. RYAN. We object to the question for irrelavancy, and think it our duty to insist upon the objection. The evidence of the witness is offered under the two specifications, in articles which I have stated. (Mr. Ryan read the articles and specifications.) The witness testifies, Mr. President, that pending the trial of that cause, Judge Hubbell stated to the witness, that he had been spoken to during the interval of recess, that day by Mr. Jones, who made to him some representations as to the character of one of the witnesses, who, as Mr. Cook says, was a main witness for the prosecution, and thereupon advised him to enter a *nolle prosequi*, which he declined to do. Now, if the Court please, this is not the occasion for me to comment upon that. The Managers will at the proper time, comment upon these views and these facts. But I contend now, Mr. President, that it is utterly immaterial whether that prosecution was a malicious prosecution or not; or whether the district attorney who was prosecuting the case, thought there was nothing of it, or not. All that matter has nothing whatever to do with it. The indictment was found by a grand jury, and was plead to by a defendant, and issue was formed to try it, and it was the place of the judge to sit upon the bench and impartially administer the law in that case. It makes no difference if that district attorney, or any body else thought he ought to be acquitted. I apprehend the opinions of fifty witnesses, as to whether an indictment ought to have been found or prosecuted, or a conviction had upon it, would not affect the case in the least, and I do not think the opinion of fifty witnessees varies the duty of the judge. I only explain it so far as it is necessary to explain the view, under which we maintain the testimony sought for is immaterial.

Court adjourned to 3 P. M.

AFTERNOON SESSION.

Mr. RYAN. Mr. President, I had but one observation more to make at the adjournment, which was suggested by one of the Managers, and that was this—that the matter complained of in this specification, and to which the attendance of the witness was directed, was a matter affecting the credibility of the witness, and that it was peculiarly the province of the jury, as it is of all juries, to judge

of the credibility of witnesses. They are the sole judges of it, and it is a matter with which the court has nothing to do; and I state that as an additional reason why no opinion of the witness, and no opinion of any body else, as to whether the indictment ought ever to have been found ought ever to have been tried, or ought ever to have resulted in a conviction, is at all matter which does not touch, nor effect, the gist of these specifications.

Mr. ARNOLD. I will ask one or two questions before putting that question. Mr. Cook, were other counsel, beside yourself, employed to conduct the prosecution?

A. Yes, Sir; I was assisted on the trial by A. D. Smith.

Q. I wish you to state to the court how you wish to be understood, by your answer this morning on the direct examination, to the question whether Judge Hubbell made the suggestion to you that you spoke of in consequence of what he had heard from Mr. Jones, or whether it was based upon the evidence which had been adduced in the case?

A. He called me to his desk and told me that Mr. Jones had been to his room during recess, and also the substance of what Jones told him, and thereupon he said, we had better abandon the case.

Q. Well, was it therefore, and for that reason, that he thought you had better abandon it. Was that the understanding you had?

A. No, Sir; he did not say that in so many words. He told me, as I have said before, what Jones said, and thereupon gave his advice, immediately following, without saying any thing else. I think the testimony at that time was all in on both sides.

Q. Had you been alone, and without assistance, would you have entered a *nolle prosequi?*

Mr. RYAN. One moment, Mr. Arnold; I shall object to that question on the same grounds that I did the other.

Mr. ARNOLD. At what time of the day was that trial concluded?

A. I think it must have been about sundown.

Q. How long were the jury out before they returned a verdict?

A. But a very few minutes.

Q. Was it one minute?

A. I cannot tell any thing about it. I left the court room after the case was submitted to the jury.

Q. How long have you been district attorney?

A. During the years 1851–52.

Q. Is it not a common thing for the court to advise with the district attorney about the propriety of entering a *nolle prosequi?*

A. I have asked Judge Hubbell's advice in some cases.

Q. In this case he offered you his advice? A. Yes, sir.

Q. Do you mean to swear that you believe that Judge Hubbell advised you to enter a *nolle prosequi* on account of what Peter Jones told him about that girl, or on account of the aspect of the case?

A. I understood he advised me at that time from what he said and nothing else I had no other data from which to draw a conclusion. I understood his advice to be predicated upon what Jones said.

Q. How came this matter to get before the committee?

A. I do not know.

Q. Did you swear the same before them as you do now?

A. Substantially, I think.

Q. How did it get out?

A. The testimony came before the committee in answer to a question. I know nothing farther about it.

Q. Had you mentioned the conversation to any one?

A. I think I mentioned the circumstance, immediately after I left the Judge's desk, to A. D. Smith.

Q. Did he advise you to enter a *nolle prosequi?* A. He did not.

Q. Did you submit the matter to his decision, and intend to let him control it. A. I intended to be governed by his advice.

Q. Were you prosecuting that indictment with all your heart, thinking it ought to be prosecuted, or not?

Mr. RYAN. That is the old question come again in another shape.

Senator DUNN. Is it not always by leave of the court that a prosecuting attorney enters a *nolle prosequi?*

A. I never did a thing of that kind without asking leave of the court.

Mr. KNOWLTON. Before you had this conversation with Judge Hubbell at the desk, and after the testimony was all introduced, did you consider it a clear case for conviction, or did you have some doubt about it?

Mr. RYAN. That is Monsieur Tonson come again.

Mr. KNOWLTON, Well, sir, I will take the opinion of the court. I propose to show that it is not like the other question. The question which I have reduced to writing and propose to the witness is—Before you had the conversation of which you have spoken, and after the evidence was all before the jury, did you consider it a clear case for conviction, or one involved in much doubt?

Mr. RYAN. That we object to. The Managers instruct me to say that we object to that on substantially the same grounds of the other—the question was for the jury, and whatever the opinion of the witness might be, has nothing to do with the case whatever.

Mr. KNOWLTON. It occurs to me that this question is very proper. This evidence which has been given by the witness, is intended to apply to several specifications, under two different articles. (Mr. Knowlton read the tenth article.) The specification is the fourteenth. Now what applicability the testimony of the witness has to this charge, is more than I have been able to comprehend. At the same time, the counsel for the prosecution has considered it proper, and at some future period, no doubt, he will enlighten the Court as to its applicability. The second charge is contained in the eleventh article. (Mr. Knowlton read that article.) Now I suppose this testimony is offered for the purpose of establishing the fact that Judge Hubbell officiously interfered with, and advised upon the subject matter of a suit then pending before him. Now the witness has detailed a conversation he had with Judge Hubbell in open court, and says that in that conversation Judge Hubbell informed him that during the intermission Mr. Jones had spoken to him upon the subject matter of the suit, and in relation to the character of a female who was the principal witness upon the stand, and that immediately following that, the Judge suggested the propriety of entering a *nolle prosequi.* Now he does not know, although at that time he formed an opinion, that that advice of Judge Hubbell was based upon the conversation which he had with this individual Jones—I believe his name was. Yet he

does not know, he states unequivocally, that it was not upon that conversation that Judge Hubbell gave his advice. It was then a mere inference that the witness drew from the language of Judge Hubbell. He has given his influence here in this matter. Now for the purpose of showing that that case was of that character, if this witness is not able to show it, we may be able to call other witnesses who considered it a case where a verdict of guilty would not be warranted by the evidence; and we propose to show it by the witness himself, although a prosecutor, that it was one involved in much doubt, and I say if we can establish that, it goes to show that the advice was based upon the fact, that the testimony was not sufficient to warrant a conviction. This is proof of an unbending fact, and it goes to explain why Judge Hubbell did, upon that occasion offer that advice. The question in this case, as in all others, is, whether the conduct of Judge Hubbell on a particular occasion, was corrupt; and if this case was of a doubtful character, so far from showing that he was corrupt, it shows that he put the prosecuting officer in an attitude where a verdict could not be pleaded in bar. I think there is no analogy between this question and the one propounded by Mr. Arnold in this Court.

Mr. RYAN. It was not we who drew from the witness this inference, that the advice was based upon the conversation of Jones; that came from the other side.—They called it out. They asked how far his advice of entering a *nolle prosequi* was based upon the conversation of Mr. Jones. We adhere to what has already been said, that it can have no possible bearing; that it is utterly irrelevant and illegitimate testimony to bear upon these articles and specifications.

The question was then put to the Senate —"Shall this interogatory be put to the witness?" and decided in the affirmative. Ayes 12, noes 12; the President voting in the affirmative.

A. I did not consider it a clear case of conviction.

Senator ALBAN. In a criminal case, when the testimony is weak, or does not support the indictment, it is not frequently the case that the Court advises the district attorney to enter a *nolle prosequi.*

A. In fact I cannot answer that question. This is the only instance of the kind that ever occurred in my practice.

Mr. KNOWLTON. Did you ever officiate in the capacity of prosecuting officer more than the two years you have mentinoned? A. No, sir.

Mr. ARNOLD. As I understand it, you have answered but a portion of Mr. Knowlton's question. The balance unanswered is—Did you consider it involved in much doubt?

A. I did consider it involved in much doubt as the case stood.

Q. Was the criminal business in Waukesha extensive?

A. It was rather limited.

Q. In your conversation did you not say to him, that you did not conceive that the case was made out, or that there was any thing in it; or, in substance, that if it were left to you, you would not prosecute it?

A. I should not like to say that. I said in substance someth ng like this, that I thought it was a pretty weak case. I had forgotten that I made any reply at all, till you put the question.

Q. I wish you would call to mind your conversation with Judge Hubbell, and state what you said further? I think you must have said more than that it was a pretty weak case. A. I do not recollect that I did.

Q. Did you not say, that as a public prosecutor, you did not deem the case made out?

A. If the language I have said I used conveyed that idea, then I did convey that idea.

Q. In fact, without trying the case over again here—which I do not seek to do—was not the main testimony of this girl of a character rather incredible, and inconsistent with ordinary human nature, and the circumstances under which human beings act?

Mr. RYAN. What ordinary human nature, and what ordinary circumstances? That appears to be hardly relevant.

Q. Was not her testimony directly impeached and directly contradicted by the lady herself who was implicated, and by a servant girl in the house?

A. It was, sir; and by both the girl and Mrs. Maynard, whose name was mentioned in the indictment.

Q. Was not Mrs. Maynard's testimony direct, positive, and unequivocal against it?

A. Yes, sir; as much so as any thing could be.

Q. Was not her testimony corroborated by the washerwoman who was hired there for that day?

A. I cannot recollect particularly what the testimony of that washerwoman was.

Q. Was it not her testimony that this woman was quite sick the night before, and that her husband sent for the doctor?

A. I think the testimony of the girl was something like that.

Q. Was not that the testimony of the neighbors?

A. I do not recollect that?

Q. Was not the testimony of the girl that she was sick?

A. I think it was.

Q. Was it not in the cold season of the year, when the doctor was called?

A. I believe it was.

Q. Was it not in the testimony, that the doctor did not take off his gloves, overcoat, or overshoes when there?

A. The testimony went, I think, that he did not take off his overcoat; I do not recollect as to shoes.

Q. Was it not the testimony of the washerwoman that Mrs. Maynard was at that time having her monthly courses?

A. Her clothes indicated that, I think.

Q. Was not the testimony also, that Mrs. Maynard had been in delicate health quite a length of time? A. Yes, sir.

Q. And that this doctor had been the family physician for a long time?

A. I believe so.

Q. Was it in proof that he had a large bill against the family, that had been running a long time?

A. Yes, sir; though how long it had been running I do not know.

Q. Was not the question such, that if you had the power, you would have dismissed the case?

Mr. RYAN. I think this sort of questioning ought to stop some time or other. It seems to me like the doctor's bill—it runs for ever.

Senator BLAIR. Did the prosecution mainly depend upon the female witness spoken of by Jones to Judge Hubbell? A. Yes, sir.

Senator BLAIR. Had the jury believed what the witness had testified to, was there evidence sufficient to convict?

A. I can state what she testified to if the Court desires.

Senator BLAIR. I meant upon her testimony alone?

A. Well, under the charge of the Court as given to the jury upon that trial, the evidence of the girl unimpeached would not have been sufficient to prove conviction.

Mr. ARNOLD. Did you not yourself approve of the charge of the Court?

A. I never found any fault with it.

Q. Did you at the time think or feel that by the advice Judge Hubbell gave you, he officiously interfered in that suit, to the manifest scandal of the administration of justice?

Mr. RYAN. I want the specification tried by the Court and not by the witness.

Q. Was the conversation to which you have testified, at the Judge's desk, carried on in such a tone of voice that the other parties could hear it?

A. It was in a low tone—rather a whisper.

Q. How old was this girl, the witness you speak of, at the time the affair happened?

A. Fourteen or fifteen years. It was testified that she was a servant.

Senator STEWART. Was the witness named by Judge Hubbell, the person with whom it was alleged the adultery had been committed?

A. She was not.

CHARLES K. WATKINS was called, sworn, and examined to Article 7, specification 7.

I reside in Milwaukee. I am practising law there. I recollect the case of Hopkins against Stevens, and was attorney for the plaintiff in that suit.

Q. Do you recollect upon the trial of that case, of making an admission of fact to the counsel on the other side? A. I did.

Q. What was that admission?

A. I admitted that certain charges which the defendant had against the complainant were after the customary rates. It was an action of replevin. These charges were claimed on goods replevied. There had been a tender, and the tender was less than the amount of those charges.

Q. In the course of the progress of that trial did any dispute arise as to that admission of fact?

A. I am not certain in what stage of the case a question arose about the admission I had made. My impression is, that it was during the instruction of the Court to the jury. I think the Court took no notice of the admission having been made until a remark from one of the counsel opposed called his attention to it. The counsel for the defendant were Judge Chandler and Mr. Orton. The Court replied to the suggestion that there was an admission of that kind, that he did not understand any such admission had been made; that if any such admission had been made, it would defeat the plaintiff. Thereupon one or the other of the counsel for the defendant appealed to me to say whether or not the admission had been made. I answered it had. They then desired that I should state to the jury the extent of my admission. I did so, and to their satisfaction, as they expressed themselves.

Q. Have you stated all the remarks made by the Judge relative to your making the admission?

A. I would not undertake to give the language of the Judge. I cannot say whether he said if I *had* made the admission, or if I *did* make the admission, the plaintiff would be beaten.

Q. Can you state any thing in relation to his permitting, or not permitting you to make the admission? A. I could not say that he did.

Cross Examination.—Q. The admission which you made and continued to make was, therefore, so far as the Court was concerned, against yourself?

A. They claimed some benefit from it, and whatever benefit there was I was willing to give them.

Q. And yet, with that admission, you recovered a verdict? A. Yes, sir.

Q. Will you state how it was that your admission was reconciled with the verdict?

A. I supposed that an inquiry into the claims of the defendant would occupy a very considerable time, and, in my own opinion, they were entirely immaterial to the issue. The action was brought for replevin, in which the defendant in the suit was claiming a certain amount as his due. The plaintiff was willing to allow a lesser amount, which he claimed was all he had the right to charge. Upon that difference he made a tender of money of the amount he thought adequate to his demand. When the tender was made the defendant took the money, and when he was possessed of the money, he declared he would apply it upon the amount. I insisted that the acceptance of the money was a compliance with the demand, and that after taking the money the plaintiff could not reserve any rights to collect the balance of his demand, and that the tender satisfied the demand, whether it was more or less, because he accepted it.

Q. Was there not a good deal of testimony as to the reasonableness of the charge—whether it was too high, or too low?

A. I think there was one deposition as to the amount; that was a question left to the jury.

Q. Did the Judge, or did you so understand him, prohibit you from making good the admission, or did he seek to avoid the force of it?

A. I do not think there was any thing in the language of the Judge that would prohibit the admission. He seemed not to have understood it.

Direct Examination resumed.—Q. I asked you the question whether the Judge said he could not permit you to make the admission. Have you not some recollection that some such remark was made by the Court?

A. I have not—nothing in the way of dictation.

Mr. Ryan. I am asking nothing about dictation, that is Mr. Arnold's word, not mine.

A. I used dictation as synonymous with the language of your question.

Q. Can you say now that he did not use any such language?

A. No, I can only say I recollect of nothing of that kind.

Q. Did he use any language to this effect—whether you could not make the admission?

A. Well, he might have said, I could or could not make the admission.

Cross Examination resumed.—Q. In the remark made by the Judge, did you understand any idea that he sought to favor the plaintiff in his right to recover, or only to explain what occurred to him at the moment as being the consequence of such an admission?

A. Well, I certainly understood it as nothing more than an explanation of the consequence of the admission.

Q. After that remark to the Court, did you go on and explain your admission to the jury, and show to them why it did interfere with your right to recover.

A. That is my impression now, but I would not be positive. I know I labored the point of law somewhat with the jury; but in what state of the case I argued, I cannot now recollect.

Mr. RYAN. You have stated the impression that the remark of the Judge made upon your mind. Do you recollect soon after you left the Court House, while walking down town with Judge Chandler, of finding fault with the Judge for interfering in your favor.

A. I did not understand it to be in my favor.

Q. That is not an answer to my question. I want to know if you expressed to Judge Chandler any dissatisfaction upon that interference?

A. I think I made a complaint, that the contradiction and interference of the Judge would prejudice my case. I cannot recollect what reason I assigned, excepting the one I now assign. If I ever assigned any reason, it was that.

Q. Do you not recollect saying that the Judge was rather trying the case on your side.

Mr. ARNOLD. Was it not precisely the contrary—that it would injure your case. A. I understood it as a ruling against me.

Q. That was the burthen of your complaint? A. That was it.

Mr. KNOWLTON. Do you remember upon that trial, that you called the attention of the Judge to the Statute upon replevin, as to the duty of the jury, when there was a lien found in favor of any party? A. No, sir.

ARTHUR MCARTHUR recalled to article 11, specification 9.

Q. Do you remember the case of Treadwell against Richards in the Circuit Court of Milwaukee county? A. I do.

Q. What was your professional connection with that case?

A. I was attorney for the plaintiff.

Q. Were you present during the trial of that cause? A. I was.

Q. Do you recollect when it was given to the jury. I speak of the first trial of the cause, and I wish you to confine your testimony to the first trial.

A. Yes, sir.

Q. Will you state what direction or order was made by the Court for finding the verdict of the jury, if they should ever agree upon a verdict?

A. After the Court charged the jury, which was at quite a late hour, he adjourned the Court and instructed the officer to ring the bell when the jury agreed, or were ready to come in.

Q. Did you hear the bell ring?

A. Yes, sir; we heard it ring, and went up to the Court House. The jury were in the Court room.

Q. You say we, Mr. McArthur, who was with you?

A. Mr. James, he was associated with me in the trial of the case. We tried to enter the Court room but at first could not get in. The door was secured and an officer was placed there; but the door was opened in the space of three or four minutes after we got there.

Q. Who proved to be in Court room, while the door was so closed?

A. When the door opened the jury and the judge came out together.

Q. Were you then informed by Judge Hubbell, as to what the jury had done?

A. We were either informed by him or by some member of the jury, that the jury had been unable to agree and had been discharged.

Q. Did the jury in fact separate at that time, without coming together again as a jury in that case? A. They did.

Q. Did any one else come out of the Court room except the judge and jury?

A. I thought not. It was quite a late hour in the evening, and the case was not one that would attract a popular audience at a late honr.

Cross Examination.—Q. What evening in the week was it that this jury was out? A. It was on Saturday evening.

Q. At what hour was the bell rung?

A. I should think it was nearly twelve.

Q. How soon after the bell rung did you arrive at the court house?

A. Well, we were in the lower part of the city, about Wisconsin street, and we repaired to the Court House as soon as we heard the bell—should think we arrived in ten minutes.

Q. Do you mean to say that the door was fast, and an officer only taking care of the door?

A. Well, such was the position of things that we were refused admittance. The jury had been left in the court room.

Q. Do you know why the bill was rung, the jury not yet having agreed?

A. I do not know. I can very readily imagine a reason for it however.

Q. Was the case one of large magnitude or of small importance?

A. Well, sir; it was an action of trover, and we sought to recover three or four hundred dollars.

Q. Do you know how long Judge Hubbell had been in the court room before you got to the door?

A. No! otherwise than from the informationwe received there.

Q. Did you ever exchange words with Judge Hubbell about that occasion?

A. No, sir.

Q. Was the case afterwards tried again before Judge Hubbell?

A. It was, and with still worse success. I believe the jury did not agree quite so near as they did before.

Q. Did you know several of the men who composed the jury?

A. I knew some of them. I knew that Gen. Crawford was on the jury, and another gentleman whose name I now forget; and I knew him.

Q. Was Gen. Crawford on one side, and all the rest of the jury on the other.

A. Yes, sir!

Q. You were very well satisfied then, I suppose, that there would not be an agreement? A. Yes, sir!

Q. (Lost by the reporter.)

A. Well, the fact was, to get into the court room, the Judge had to go into the room where the jury was, and no one could have gone in without going in where the jury were.

Direct Examination resumed.—Q Did either you or Mr. James make efforts to enter the room? A. Yes, sir!

Q. And these efforts failed? A. Yes, sir! We made verbal efforts.

Cross Examination resumed.—Q. Was the Judge to your knowledge, or even hearsay, instrumental in keeping the door closed upon you?

A. Well, I had some information about it at that time from the officer. The

officer informed us that the Judge had given him instructions to let no person enter the room.

Q. Well, did he say in direct terms, that after the bell rung, Judge Hubbell had instructed him not to let anybody in?

A. Well, I supposed from his language, he meant to convey that idea. He said, as near as I can state it, without speaking about whether it applied to that particular time, or when he was left in charge of the jury, in the first instance, that the Judge had instructed him not to let any person go into the court room.

Q. Well, was not that an ordinary instruction?

A. Always, I think, in every instance where I have been present.

Q. Who was the officer?

A. I thought at the time it was Frank Devlin or John White. I have now brought my mind to believe it was the sheriff himself, Mr. White; but that is a matter about which I will not be positive. Mr. Devlin has informed me that he was not present himself.

Q. Have you any means of knowing whether Judge Hubbell, being inside, knew you were at the door, and were desirous of coming in? A. I have not.

Q. Did you see Judge Hubbell that night at all?

A. I saw him when we went in, and spoke to him—not about the door being closed, but about the case.

Q. In that conversation did you complain of any wrong being done?

A. No, sir!

Q. You were satisfied to try the case before him again afterwards?

A. Yes, sir!

Q. How long had the jury been out?

A. I think from about 8 o'clock, nearly four hours.

Mr. KNOWLTON. At the time you got to the court house door, after hearing the bell ring, did the officer stand on the inside or out? A. On the outside.

Q. You made no attempts to talk with him about going in? A. That is all.

Q. Do you suppose you talked loud enough for the Judge to have recognized your voices?

A. It was in the ordinary tone; and I do not think a person inside could understand what we said. While we were talking, some person came to the door on the inside, and it was opened, and the Judge came out.

Mr. RYAN. Did Mr. James do some loud talking there?

A. I do not remember that he talked very loud; but I know he did talk with the officer.

Q. In regard to the instructions given by the Court to take charge of the jury, was there any instruction given except the ordinary oath of the officer—to suffer no one to speak to them, and not to speak to him himself, except to ask if they have agreed?

A. I think not, sir; I think it very frequently happens when the jury occupy the Court room itself, the officer is instructed to clear the Court room and to keep it clear. I think I have heard that direction.

CALVERT C. WHITE recalled to specification 21, article 10.

Q. Do you know the case of White against Martin, in the Circuit Court of Waukesha County, a motion of foreclosure. A. I do.

Q. Were you an assignee in the foreclosure in that case? A. I was.

Q. Had you any conversation with Judge Hubbell in relation to any of the proceedings in that cause?

A. The mortgage in which the decree was made was for two instalmens. The mortgage was foreclosed in the first instalment and the premises were advertised for sale. I proposed to bid them in myself, and in order to do so, I expected to be obliged to pay the whole amount of the mortgage, and I called upon Judge Hubbell to ask him if any order could be made whereby I could get rid of the necessity of paying in all the money. I told him I supposed the register would not receipt the money, unless it was actually paid in, and at the same time saying, I could not pay so large a sum. He said the money could be paid to him, as well as to the Register, and that I could pay him a portion, $150, or so, and take a receipt.

Q. Was that arrangement carried out?

A. No, sir; the sale did not take place.

Q. Did the Judge inform you whether that payment to him, of $150 or so, would answer the purposes of the cause, as well as paying the second instalment into Court?

A. He did not. The conversation took place at the clerk's or judge's desk, during the trial of the cause. It was very brief. I think I have stated it word for word.

Cross Examination.—Q. Were you at that time acting clerk of the Milwaukee county circuit court? A. Yes, sir.

Q. Your seat as clerk, was directly under the Judge. You turned round, and these words passed between you? A. Yes, sir.

Q. The whole of the money was coming to you?

A. Yes, sir. I was the owner of the mortgage.

George P. Thompson, called, sworn and examined to specification seventeen, article ten.

Witness. I reside in Dane county. I know James M. Haney.

Q. Do you recollect the circumstance of his being tried in the circuit court of Dane county, upon an indictment for an assault committed upon Thomas Harland? A. Yes, sir.

Q. Had you at any time any conversation with Judge Hubbell, on the subject of Haney's offence or indictment?

A. I had a conversation, I believe, with Judge Hubbell, in relation to the offence Haney was accused of.

Q. Did you state to him the facts and circumstances accompanying that offence?

A. I cannot recollect positively, whether I did or not; perhaps I did.

Q. Did you speak to him of the quarrel between Haney and Harland?

A. I think probably I did talk to him during the conversation upon that subject.

Q. Will you detail that conversation.

A. I do not know that I could recollect any of that conversation. I have no doubt I did tell him about being present at the time Haney shot the man. I think it very probable I did tell him that.

Q. What time was that?

A. I do not know whether it was before the trial or after, or while the trial was going on. It was at that Court when Haney was tried.

Q. Was it before Haney was tried?

A. I do not know, but I think I had a conversation with Judge Hubbell before he was sentenced, and perhaps after he was sentenced.

Q. What was your purpose in that conversation with Judge Hubbell?

A. I do not know that I could tell you particularly, only to talk with Judge Hubbell about it as men do talk about things.

Q. Were you ever friendly with Haney. A. I was.

Q. Did Judge Hubbell know from you that you were friendly.

A. I do not know indeed, whether he did or not. I presume from the manner I spoke of Haney, he might have supposed so. I do not think I told him I was an enemy of Haney.

Q. I wish you would give if you can, the purport and matter of your conversation.

A. I cannot recollect so long ago as that has been, exactly the words. I talked to him perhaps about Haney's shooting that Harland; about being present at the time; about the causes that made him shoot. I am not positive whether I did tell him these things or not, but I think I did.

Q. Was there not provocation in the quarrel that did not appear upon the trial, and did you so state to Judge Hubbell? A. I think I did.

Cross Examination.—Q. How long was it after the verdict was rendered, before sentence was pronounced.

A. I do not recollect positively, how long it was. I do not recollect whether it was the next day after the jury had brought in their verdict or the day following.

Q. Did you have any conversation with anybody else upon the subject.

A. Oh, yes; it was a very common subject of conversation. I talked with George B. Smith about it. I had a conversation with him about what punishment ought to be put upon him. I went to him and asked him, if he was not willing that Haney should be fined instead of imprisoned, or if he wished to send him to prison and ruin his family for ever. He said he did wish him imprisoned.

Q. What did he say in regard to any thing he could say to the Judge?

A. My mind is not as clear as I could wish it upon the subject of what he was to say to the Judge; but my impression is, that Smith agreed to go and see the Judge and ask him to fine him, instead of imprisoning him. In the evening there was an arrest of judgment pending before the Court. The sun was shining in at the west window, and Smith and Collins, and I think Haney and three or four others, had a conversation at one of those windows, and it was my understanding that Smith went from the window to the Judge's seat to ask him to fine Haney instead of imprisoning him. That was before sentence was pronounced, a very few minutes. Mr. Smith did go up into the Judge's seat. They were talking low. They had their heads close together as if they were whispering. I thought they were talking upon that subject. Smith has since told me that the Judge beckoned him to come up to his seat. I did not see that, and do not know whether he did or not; but he left me with the declaration that he would go to the Court and speak to the Judge upon the subject. Mr. Collins was present and I am not sure but Beriah Brown was present. I knew that Brown was anxious that Haney should be fined instead of imprisoned.

Q. Was there any personal acquaintance between Haney and Judge Hubbell?

A. I do not think Haney ever spoke to Judge Hubbell. Haney was a stranger in the county; that was one reason why I wanted to show him human friendship, he did not have very many friends, and a very limited acquaintance. He had a wife and five or six children. He was about thirty five or six years of age. He resided on Black Earth plains. He had resided there ever since he came to Wiscensin, and lives there now.

Q. What has been his position in society?

Mr. RYAN. *Cui bono*, Mr. Arnold, what is the purpose of that question, I have given you a pretty long rope; but it seems to me you are extending it unnecessarily?

Mr. ARNOLD. Do you know of any corrupt or incorrupt influence being brought by yourself or any body else, to bear upon Judge Hubbell, to influence him in his decision, as to the sentence he should pronounce upon Haney; or did you know of any improper or corrupt motive in the Judge?

Mr. RYAN. That question is objected to also; and the objection of the Managers is very briefly stated. The first of the charge in question is, that Haney was convicted of an offence which by the statute was punishable with imprisonment in the penitentiary, that the Judge of the Court where he was convicted abandoned his duty and violated the statute, by only fining him $200. We have already, rather than insist upon objections allowed the counsel to go to a very wide extent—asking him as to the part Smith had taken in the matter, and as to the wife and children and social relations of the defendant. It seems to me that the counsel have taken the same view of this offence which I take of it. It seems to me they think as I think, that it was a usurpation by the Court of the executive prerogative of pardon and clemency. I judge so by the questions put. All those questions might have been very proper matters to have been submitted to the executive of the State to induce him to extend clemeucy to the defendant. I apprehend the Judge sitting on the bench to judge of the law, changed positions with the executive, when he departed from the requirements of the statute upon considerations like these, and I see no other way for them than to claim for him the right of exercising executive clemency.

Mr. ARNOLD. That is not our position at all.

Mr. RYAN. I am judging by your questions as well as I can, and I can see no other drift of them than that. If all Dane county held an election, and polled an unanimous vote to petition the judge to thus disregard the statute, it would be in my judgment no less a departure from the duties of his office. It would be very well where the constitution rests the power of clemency, but it cannot have the effect of licensing a Judge sitting upon the bench to over-ride the law of the land. It is well that there should be a statute of law prescribing that the punishment of offences should not rest in the breast or conscience of any judge. There are high and weighty reasons why the statutes of nearly all the States have prescribed that the function of pardon should not be vested in the judge. It is no pleasant duty for any judge to administer the law of the land; it is no pleasant task for any Court to send the head of a family to punishment, it is perhaps for that reason, a policy that the statute law of the land should provide for the punishment of offences. There are states where, within the limits of statute law, juries have the sole power of deciding the term of punishment and pronouncing the sentence. There is no reason why that

discretion to overcome and over-ride the law, should be vested in the Court any more than in the jury. Now, in regard to this question, we ask and desire no more than that the facts, and all the facts, should come before the Court, and when they come, we ask the judgment of the Court upon them, and not the judgment of the witnesses. We have no objection to their asking the witness what influences were applied to procure this sentence. We have no objection to the witness saying what motives influenced the Judge. He may testify to the extent of his knowledge without objection from us, to all the influences which operate in the minds of the Judge; but we do not want his judgment as to what is a corrupt or improper motive; or that we want the judgment of this Court alone; and, in regard to the second question, as to the motives that operated in the mind of the judge, I do not know how the witness is to answer, unless he may have been told by the Judge himself. He may state all the facts, but I object to his judgment as to what is proper or corrupt—and to his conclusion, whatever it may be, as to what operated on the mind of the Court.

Mr. Arnold. It is possible that the phraseology of my question may be a little unfortunate, and, I believe, it may be changed; but the object at which I was aiming in asking the question I have put is, in my judgment, entirely legitimate. I would not have the counsel suppose for a moment that we claim the right on the part of the respondent to exercise the prerogative of pardon in acting as a judge upon the bench. We claim no such thing; but I will state to him what we do claim, and particularly in reference to this accusation. We shall claim, in the first place, from the proof already given, and that which will be adduced hereafter, that there was an opinion in all quarters entirely unanimous in favor of this very decision, and even between the defence and prosecution, an arrangement was assented to, with a view to relieve from sentence to the penetentiary the defendant who had been convicted. We shall claim that as a species of moral defence, for whatever it may be worth. We shall claim also, that from the phraseology of the indictment upon which the defendant was convicted, it was a fair and open question, whether the respondent, the Judge, had not the right to impose the sentence he did. And, in the third place, which is precisely and directly to the point, that though the act may have been wrong and illegal, being prohibited by law, yet, for all that, there is in it no matter for impeachment unless there be corrupt intent; and in uttering that sentence, I am uttering the whole legal defence of the respondent at the bar. The respondent can only be impeached, and is only attempted to be impeached for corrupt conduct in office, or for crimes and misdemeanors. There may be a wrongful, there may be even an illegal act, and yet be no corrupt conduct in office. It is the intent, the wrongful design, which makes the illegal conduct of the respondent impeachable; and that alone—and I care not how many indiscretions, how many errors of judgment, how many wrongful acts, how many evidences of imprudence may be proved against him—if there be not proof of wrongful intent, of corrupt design, then there is nothing for which this respondent in this proceeding can be found guilty. That will be a matter for argument hereafter. I only announce it now because of the objection to this interogatory which is aimed directly at the intent of the respondent, which made him pronounce the sentence he did. His motive, whether good or bad, is a legitimate subject of inquiry. If the phraseology of the question is bad, I will have it changed. I only wish to ask the witness whether any improper motive coming from himself or from any other person to his knowledge, influenced the respondent.

Mr. Ryan. I have the instruction of the Managers to say to the Court, that as the counsel for the respondent has seen fit to open what he calls his moral defence, and as moral defence is fashionable in these days, if the corrupt, arbitrary and illegal conduct cannot impeach the Judge, upon whom it is proved, if we must penetrate his heart and take out from it, and exhibit bodily in the Court, all the corrupt motives which guides that heart, then there is but one Court of Impeachment, and we sit here upon an idle purpose. If it be true in any court on this earth, where any man has been called to answer for any act, that the prosecutors must drag a dishonest motive out of his heart, then the administration of justice in criminal cases is at an end upon this earth. But the law intends that what a man does, he does for the purpose which it bears upon its face. It is so in every criminal tribunal. It is so in every court of impeachment; and the history of all impeachments shows it. The corrupt motive of oppression, the motive of dishonesty, the motive of overriding the law, the motive of tampering with money, the motive of all such offences as have been charged here and as have been charged in other impeachments, cannot be dragged from the heart of any one unfortunate enough to be guilty of such acts, any more than the *animus ferendi* can be dragged out of the heart of the thief or out of the heart of the murderer, or the corrupt motive which is the essence of crime to be sure, can be dragged out of the heart of any man who is charged with it. We are here as in all courts, to infer that all acts so done, are illegally done; that all acts are done for the purposes which they bear upon their face; and the Managers would not assent that remarks such as these should pass unanswered on the subject of this interrogatory.

[Mr. Knowlton here read the following substitute for Mr. Arnold's question:]

Beyond what you have already said, do you know of any means being used or brought to bear upon Judge Hubbell in order to influence the Judge as to the sentence to be pronounced, other than requesting the Judge to impose a fine instead of imprisonment, in case a fine could by law be imposed, in the discretion of the Court, as well as by sentencing Haney to imprisonment?

Mr. Ryan. The substitute obviates the peculiar objection which I interposed, and I now withdraw it.

Mr. Arnold. I beg pardon of the Court for one single moment, not to reply now to the remarks which have fallen from the learned counsel for the Managers, but simply to say that I stand upon the position which I have just assumed, and to ask the Court to bear it in mind throughout this case. The issue is now fairly made up, it is fully before this Court, and I hope hereafter at the proper period, to be able to substantiate, by authority, most fully the truth of the position which I assumed a few moments ago, and the contrary of which has been assumed by the learned counsel for the Managers. I hope to be able to make it appear to this Court, that in a proceeding of this kind it is not only necessary to prove an act—to prove a wrongful act if you please—to prove an illegal act if you please, but that something else must be proved besides the act itself; that the act being proven does not authorize the inference of guilty intention, but that the guily intention, the *scienter*, must appear in the evidence, must be proved home to the respondent, in order to make him impeachable; and I expect to show this by most abundant authority, which I think will puzzle the gentleman with all his legal ability to answer.

Answer to the above question. Do you mean any bribe being offered to him?

Mr. ARNOLD. No! I will read you the question again.

A. The Court might think the conversation I had with him was a means. I never knew of any body offering him any thing, or asking him to do any thing that was improper. I never did any thing of the kind myself.

Mr. RYAN. In the conversation between you and Judge Hubbell, was there any thing said about Haney's being fined instead of being sent to the penitentiary?

A. I do not recollect whether I had any such conversation with him or not. I might have asked him if such a thing would be lawful. I know I would have asked him if I had dared. I was none good to do it.

Q. Did not Smith state to you, when you were talking about his being fined, that he had done his duty and the Judge must now do his?

A. When I went to him, I related many of the circumstances within our mutual knowledge, and asked him if he wanted to send Haney to prison and ruin his wife and children. I think I told him that he had prosecuted him ably, and that now he could ask Judge Hubbell to fine him, and that he need not care since he had done his duty. Smith might have answered that he had.

Q. But don't you recollect that he said that he had done his duty, and the Court must do his?

A. It is very probable that he did, though I do not certainly recollect it. I know I thought I had touched Smith's sympathies in talking to him.

THOMAS HOOD was called and sworn in reference to specification 3, of article 8.

Q. Are you acquainted with Mrs. Jane Van Bergen? A. I am.

Q. Did you serve a subpœna upon her to attend as a witness upon this trial.

A. I did.

Q. Do you know where she is now.

A I do not. She left this town a few days after she was subpœnaed. I do not of my own knowledge know whether she has left the state; but I am well persuaded in my own mind that she has.

Cross Examination.—Q. Do you know of this lady having made arrangements of various kinds during last winter, with a view of going to California.

A. Well, she sold her real estate and personal property, in February or March last.

Q. You do not know of her going on account of Judge Hubbell's solicitation.

A. No, sir.

WILLIAM A. BARSTOW was called and sworn to specification 9, article 10.

I reside in Waukesha and know Judge Hubbell.

Q. Have you ever been requested to speak to Judge Hubbell in reference to cases pending in any of his Courts. A. I have.

Q. Have you in pursuance of such requests done so.

A. In pursuance of the request of one Mr. Jones, I have spoken to him, though I believe that was not a case pending.

Q. Well, sir, pending or about to be pending, have you spoken to him?

A. I have talked with Judge Hubbell about suits pending; but I have no recollection now of talking with him in regard to any suit pending, at the request of any individual.

Q. Have you spoken with him about suits pending in any of his courts

for the purpose of influencing him in the cases? A. No, sir.

Q. For what purpose have you spoken to him then?

A. I have frequently asked him for information.

Q. Have you spoken to him about suitors in his courts, with the view of influencing causes in which they were suitors.

A. I have in some instances referred to suitors in general terms.

Q. Have you done that for the purpose of influencing the cases or influencing the decisions.

A. I have sometimes given my views very freely with regard to cases.

Q. Have you done that with the view of influencing cases or affecting them.

Mr. KNOWLTON. Do you maintain that that is within this specification.

Mr. RYAN. I do, sir.

Mr. KNOWLTON. Well, that is a very general specification. I do not know what you do mean by it particularly. It would require a Philadelphia lawyer to know what it does mean, if I understand it correctly.

The Court adjourned until the next morning.

SIXTEENTH DAY.

FRIDAY, June 24.

MORNING SESSION.

Mr. KNOWLTON. Mr. President, I now offer the plea and answer of the respondent to the additional specification, numbered nine, to article seven:

And now comes the said respondent, Levi Hubbell, by J. E. Arnold and James H. Knowlton, Esqrs., his attorneys, and, to the ninth specification to the seventh article of Impeachment, by the Honorable the Assembly, in addition to the articles and specifications heretofore preferred against said respondent, now here preferred, answers and says:—That he is not guilty of the said supposed acts of corrupt conduct in office, or any of them, above laid to his charge, in manner and form as the Honorable the Assembly hath above thereof, in and by the said ninth specification complained against him.

And for a further answer to the said ninth specification, the said respondent says, that it is true that one Eliza C. Wyman, at or about the time, and before the court named in the said specification, did obtain a decree of divorce from her husband, William W. Wyman; but that said decree was obtained upon competent evidence and in due course of law, according to the rules and practice of the said Court; and this respondent further says it is not true according to the best of his knowledge, information and belief, that the suit between the said parties was instituted and prosecuted, or that said decree was obtained, by the consent of said William W. Wyman, or by collusion between him and the said Eliza C. Wyman. On the contrary, the said respondent believes now, and did then believe, that the said William was hostile to said proceedings.

And this respondent further answering, says, that near the time of the commencement of said suit—but whether before or after he cannot say—he did have an interview with the said Eliza C. Wyman, but that the same was not "private" or "indecent," nor such in any respect as to justify the epithets bestowed upon it by the Honorable the Assembly; that such interview was nei-

ther sought nor procured by said respondent, and that it took place in presence of the sister and brother-in-law of said Eliza C. Wyman, and in presence of a respectable citizen of Madison, in whose house she was then residing.

And said respondent further answering says:—That it is not true that he even permitted the said William W. Wyman to exhibit him affidavits for any purpose; but that sometime before this respondent knew or had heard that any proceedings for divorce were contemplated by said Eliza C. Wyman, John Catlin, Esq., did call on this respondent, representing himself as the attorney of said William W. Wyman, and did offer to read to this respondent certain affidavits, proposed to be made the foundation of a suit for divorce by the said William, and that several days afterwards, and after the suit by the said Eliza C. Wyman had been commenced the said William called on this respondent and commenced making complaints against his said wife and against the entertaining by this respondent of any proceedings for a divorce on the part of his said wife; and this respondent, to get rid of him, did remark to him in substance, jestingly, that if his wife was such as he represented her, a decree of divorce obtained by her, would seem to be just what he wanted, or would answer all his purposes. But this respondent wholly and absolutely denies that further than as he has above stated, or in any other manner, he did even countenance or suggest an assent on the part of the said William W. Wyman to the proceedings for a divorce by his said wife.

ARNOLD & KNOWLTON,
Attorneys for Respondent.

Mr. BARSTOW recalled.

Mr. RYAN. I was asking you the question last evening when the Court adjourned, whether the conversations which you testified to having had with Judge Hubbell, about suitors in his Courts, were had by you with the view of influencing causes, or the decision of them?

A. Well, sir, they were had partially with a view of ascertaining his views of the pending questions.

Q. That is not quite a full answer to my question. Did you seek and hold those conversations with Judge Hubbell, with the view of influencing those causes or the decision of them?

A. There may have been instances when I had that object in view.

Q. Were they not had in fact, for that object?

A. I think they may have been.

Q. But were they not absolutely for that purpose?

A. Will you please to state the question again.

(Mr. RYAN repeated the question.)

A. Well, sir, as I stated before, I *have* conversed with Judge Hubbell upon causes pending, with the hope of affecting, or with a desire, perhaps, to affect the cause and the decision of them; but whether it had that result or not, I am unable to say. I have, on some few occasions, conversed with Judge Hubbell about matters pending before him, and I am free to say, that I had hoped to inspire him with the view which I entertained of the cases. That is as direct an answer as I can give.

Q. Were your conversations with Judge Hubbell, of which you have testified, ever repelled by him.

A. I do not know that they were, sir.

Q. Were those cases of which you spoke to him, mainly or altogether, cases in Waukesha county.

A. All of them, I think. I recollect of speaking to him of the case of Dr. Jehiel Smith, tried under an indictment for adultery. I however, spoke simply with reference to the parties—I simply expressed my views of the proceeding.

Q. Will you tell us what you did say?

A. I stated that I thought the whole proceeding of the indictment was a malicious one, or something to that effect. I told him I thought Dr. Smith was a good citizen, and that I thought he was pursued by some enemies of his, who were seeking to make him trouble. That is the substance of all I stated about that case.

Q. Do you recollect any other case.

A. I recollect some conversation with Judge Hubbell, in regard to the contest in our county, between Jones and Davis, for the treasurership.

Q. Are there any other cases, which you recollect.

A. None that I recollect distinctly. It was not an unfrequant occurrence, while the Court was in session, to ask some questions as to how certain causes were proceeding, but I do not remember those cases now.

Q. Do you recollect a case of your own, where you acted as administrator of Josiah Barber, and had you any conversation with Judge Hubbell about that case.

A. I have frequently alluded to that case in conversation; it has been in court some five or six years.

Q. Do you recollect a conversation with Judge Hubbell about that case, at the November term of the Circuit Court, 1852.

A. Yes, sir; but to go back of that, at the spring term of the Court, the case having been some four or five years, and I don't know but six, in Court, we were ready for trial, and had been for years; the judge then stated to the counsel that at the next term—the November term—we must be prepared for trial. We were prepared. The counsel for the other side asked for a further continuance. The Judge stated at the time, that he gave notice at the last term that the cause must be tried, and unless parties consented to that effect, it must come on. It was then, or subsequently, stated that there was a prospect that the parties might settle and not come to trial. The case laid over two or three days, to give the parties an opportunity to come to a settlement. I met Judge Hubbell one day at or near the Court House, or near where he was stopping; he remarked to me that if there was any thing being done to accomplish a settlement on that matter, he did not wish any thing to be done which would embarrass him in his position; he did not wish any thing done which would force him to change his position, as it was regarded as due to him, that we should come to trial.

Q. Had you had in that Court, from time to time, causes in which you had a personal interest. A. I have.

Q. Have you ever mentioned, apart from what you have already testified—have you ever mentioned or spoken of these cases to Judge Hubbell.

A. I think not, sir. I may have made the inquiry as to when certain causes would come on for trial, or something to that effect.

Q. Were the interviews of which you testified last evening, all, or any of them, sought by you with Judge Hubbell upon request of suitors, or persons about to become suitors.

A. Yes, sir; I did at the request of Dr. Smith, speak to Judge Hubbell, and also in the case of Jones—that, however, was before the commencement of the suit, and at the time I supposed it was a case for the supreme court, and not for the circuit court. I have no recollection of any other case.

Q. Have you not a general recollection of other cases, without remembering the particular cases. A. No, sir.

Q. Do you recollect an election for chairman of the board of supervisors in your town, to which yourself and H. N. Davis were candidates. A. I do, sir.

Mr. RYAN. I forgot to state that I am now examining the witness under specification nine, article ten.

Q. Was there a contest about that election—a controversy as to who was elected.

Mr. ARNOLD. Do you ask if it was a legal controversy?

Mr. RYAN. No, sir.

Mr. ARNOLD. Then I object to the question, and it is objected to simply for this reason—that it was a controversy out of Court, according to your own statement of it.

Mr. RYAN. My purpose in asking is, to show that Judge Hubbell allowed himself to be improperly approached, not only in suits pending, but in suits about to be instituted. We propose to show that there was a controversy and an intention to institute legal proceedings.

Judge HUBBELL. Well, let him ask the question.

Mr. ARNOLD. The objection then is withdrawn.

Witness. There was this, only, in regard to it—I remonstrated against Davis taking his seat in the board; Davis got the certificate, and I claimed to be elected.

Q. Was not that something like a controversey.

A. I suppose it was. I referred the matter to the board.

Q. Did you consult Judge Hubbell upon the subject of what legal proceedings it would be necessary for you to take to get your seat as chairman of the board of supervisors of the town of Waukesha.

Mr. ARNOLD. I object to that question; and at the same time that I make the objection, I wish the Court to be extremely easy about it. I do not want that they should reject the question simply because I wish it, if they think it legal. I object simply to save time. The witness has already answered that he remonstrated against Davis taking his seat as chairman of the board of supervisors, and referred the decision of it to the board. Having so referred it, it seems to me that this question becomes irrelevant, because the charge says—"Judge Hubbell allowed himself to be improperly approached on the subject of proceedings instituted, or *about* to be instituted." This question must apply to the suits "*about* to be instituted;" otherwise, I apprehend the charge would be totally immaterial, and without point. If we are to go into inquiries of this kind of difficulties existing between parties, and applications which were thoughtlessly and innocently made to the Judge, to know what the law was, I apprehend that this case may last till next January; for I have known the fact that when two parties have got into a difficulty, the Judge's time has been pressed upon disagreeably, as that of lawyers is, day after day, by the asking of such questions. It is disagreeable to them either to reveal or to conceal the answer, and out of politeness to the parties, they stop a moment and reply to the question.

This has been true of the Judge. Now, Mr. Barstow, as is shown by his own testimony, having already referred the decision of the controversy to the board of supervisors, it would preclude the idea of any contemplated proceedings before Judge Hubbell.

Mr. RYAN. We certainly would not insist here upon giving proof of Mr. Barstow's having consulted the Judge upon the subject of legal proof, or other matters in his case before the board of supervisors, although we do all think that the less judicial advice the better upon all subjects. There are very few matters of controversy which are not liable to come before the circuit courts, and the statute of the State, only enforcing a rule of common propriety and common morality, is conclusive upon the subject—"No Judge shall receive fees except those expressly given by law, nor advise parties litigant as to subjects which he has reason to believe will be brought before him for decision." And, I say, as there is hardly a controversy that can arise, which is not liable to come before the circuit courts. At the same time we would not press any question which tended to bring out advice as to what the witness should do before the board of supervisors. Our purpose is to show advice or consultation in regard to proceedings in the circuit court. The gentleman himself cannot anticipate the whole, nor can we in every question anticipate the whole; we put the question for the purpose of coming at the advice given in reference to proceedings in the circuit court, and it is enough to make it a relevant question if it tends that way. We cannot put all our questions into one. We can only say, we put the question with the view of showing a consultation concerning the controversy between the witness and Davis, and concerning proceedings in the circuit court. Mr. Barstow, to be sure, has said he referred the controversy to the supervisors; but that would not be conclusive upon Mr. Barstow at all; but whether it would or not, makes no difference to this question, because, if the advice given, or the consultation had, was upon the proceedings in the circuit court, all advice should have been withheld, all consultation should have been refused. I think it is very likely, as Mr. Arnold states the fact, that there has been a great deal of this kind of questioning and advice done, and it is of the doing of that, that this article and these specifications complain; and, Mr. President, we insist upon the question as tending to show a consultation and advice upon the subject of proceedings in the circuit court, and not before the board of supervisors.

The question was put to the Senate—"shall this question be put to the witness?" and decided in the affirmative.—Ayes 22; noes 2.

Witness. I saw Judge Hubbell, I think, at his room at the U. S. Hotel in Milwaukee, and stated to him the circumstance of the election, its being very close, that it was supposed there was some fraud about it, and that I was advised to contest the matter. I asked the question whether the proper place to refer the matter for decision, was not before the county board; to which I think he replied that in his opinion it was. That as nearly as I can recollect, was the conversation. I did not charge my mind particularly with it.

Mr. RYAN. I will state to the Court and counsel, that I had reason to expect a different answer, or I should not have put the question.

Q. Do you recollect at that conversation asking Judge Hubbell, what course you should take in regard to the matter, and his advising you to take any judicial course.

A. My recollection of the matter is as nearly as possible as I have stated it. There might have been some conversation in relation to judicial proceedings.

Q. Do you recollect any conversation at all on the subject of judicial proceedings. A. I do not.

Q. Was that before or after you had referred the matter to the county board.

A. It was before. I may have asked the question how I should proceed; though I do not recollect of asking such a question.

Q. Do you recollect of ever conversing with Judge Hubbell, on the subject of the Fox and Wisconsin River improvement scrip. A. Yes, sir.

Q. Do you recollect a conversation between you, Judge Hubbell and Mr. Fassett, on that subject. A. Yes, sir.

Q Will you state that conversation.

Mr. ARNOLD. Do you expect to show any legal proceedings contemplated?

Mr. RYAN. I do not think I shall; but I propose to show conversations on subjects every day that were liable to come before the Courts. I do not suppose that I can show any distinct advice as to proceedings contemplated.

Witness. I think it was in the month of August last, that I met Judge Hubbell in the city of New York. At my request he went to see Mr. Fassett—with whom I was endeavoring to negotiate some Fox and Wisconsin rivers improvement scrip—to state to Mr. Fassett the substance of the decision of the supreme court in the case of Resley and others commenced against the Governor. I had letters from Judges Larrabee and Knowlton, stating what their opinions were. The decision was not then ready to be delivered. I asked Judge Hubbell to state to Mr. Fassett what the substance of that decision was. Judge Hubbell stated, in substance, what Judges Knowlton and Larrabee had communicated to me by letters, and gave his views at length on the subject of the decision, and also in regard to the questions generally connected with it.

Q. Do you mean the right of the state to prosecute the work, and the liability the state for it.

A. It referred more directly to the decision which I had read to Mr. Fassett in the letters. This was, that the opinion of the majority of the Court was, that these contracts created a debt against the state. He stated that as his opinion, and then gave some reasons for that opinion.

Cross Examination.—Q. I understand the sum and substance of your testimony up to the last question to be, that, at different times, your conversation with Judge Hubbell, was in regard to suits pending and the parties and suitors therein; and that on some occasions, they were at the suggestion of suitors; and that you had these conversations with the hope that you might influence the Court, and you have named two cases—that of Jones and Dr. Smith—Did you ever state in any of these conversations to Judge Hubbell that your object was to influence him. A. No, sir.

Q. Did he know, in any way, from any thing you communicated to him, that you sought the conversation with a view to influence his mind about the suits or parties. A. I think not, sir.

Q. Did he ever tell you, in any of these conversations, that he was influenced by them, or that his mind was affected by what you said. A. No, sir.

Q. Did you ever ask him, in fact, to decide a case in a particular way.

A. No, sir.

Q. Did he ever give you any assurance or promise that he would make a particular decision. A. No, sir.

Q. Did you board at the same house while he was holding court at Waukesha at any particular time. A. I think not. I was keeping house there.

Q. Did you not see him frequently during the sessions of the Waukesha court. A. Yes, sir.

Q. Were not those conversations, many of them, barely incidental, and participated in by others as well as by the Judge and yourself. A. Yes, sir.

Q. Were they not general conversations about what was going on in the court. A. That was frequently the case, sir.

Q. You did not state, in answer to a question of Mr. Ryan, what your conversation was in regard to the treasurer case.—You may now state that conversation.

A. I stated that Jones had been elected treasurer, that it was said that Davis would not surrender the books and papers; that he (Jones) was entitled to the office; and that I wanted him to have it; and I asked the Judge what way he would have to proceed to get it; at the same time asking him if it was not a supreme court case. He replied, that he did not know but it was a matter over which he had jurisdiction, and that he would look the question up and determine where the jurisdiction was. At that time my business duties called me here, and I did not see him again very soon; that is the substance of the conversation.

Q. In regard to the case of your own, of which you have spoken, and in which you acted as the administrator of Josiah Barber—did you there attempt to influence him in regard to the judgment he should pronounce, or did you have any assurance from him what that judgment would be. A. No, sir.

Q. Did you ever discuss with him, at any time, the merits of that case?

A. No, sir.

Q. Nor any other case in which you were ever interested? A. No, sir.

Q. Did you ever receive from Judge Hubbell, at any time, any instruction how he was going to decide any case? A. No, sir.

Q. Have you stated, in all the cases, the substance and extent of your interviews with him? A. I have, sir.

Q. Have you copies of the letters from Judges Larrabee and Knowlton?

A. I think I have not. I left them in New York.

Q. Was it your object in soliciting Judge Hubbell to see Mr. Fassett, to get from him a statement similar to that you had received in the letters from them?

Q. Yes, sir. The Judge gave a similar account of it, but went more at length into the subject than they did, as he was there and had an opportunity of answering the various questions which Mr. Fassett presented. That decision had not then been made public.

Q. Was it a bare matter of friendship to you, to explain the decision of the supreme court, that the Judge saw Mr. Fassett, or was it done for a fee?

A. It was an act of friendship, I suppose; there was nothing offered in the shape of a fee, and no conversation of any thing of the kind.

Q. Do you not know, in point of fact, that it was done purely out of favor to you? A. I have no doubt of it.

Q. Do you not *know* it?

A. I know it so far as myself was concerned; he did it very cheerfully, at my request.

Mr, HURLBUT recalled to specification four, article ten.

Q. Do you know Mrs. Julia N. Janes?

A. I do, sir. She resides at Oconomowoc. I cannot tell where she is now; she is not at home—I think she left home on the 7th of this month.

Q. Is she within this state?

A. I suppose not. She started for Worcester, Massachusetts.

Cross Examination.—Q. Where is Mr. Janes? A. In California, I suppose.

Q. Do you know what she left for?

A. She said she was going to see her friends. I believe she was originally from Worcester. I knew of her going before she went. She had being talking about going for some time, and then gave it up; she then made up her mind to go, and went.

Q. She is a respectable lady, is she not—having a character entirely above reproach? A. She has that reputation.

DOMINICK CASEY, called, sworn, and examined, to article ten, specification sixteen.

Witness. I reside at Waukesha.

Q. Do you recollect the case of Reuben D. Turner, who was prosecuted in the Circuit Court of Waukesha for seduction?

A. I do. I was sheriff of the county at that time?

Q. Where was Turner?

A. He was a portion of the time in jail, in my custody.

Q. Did you carry a message, while he was in jail, from him to Judge Hubbell? A. I did. He requested to have the Judge come and see him.

Q. Did the Judge come? A. He did.

Q. About how long did he remain with Turner? A. I think about an hour.

Q. Were you present, and what was the subject of conversation?

A. I was present; the subject was the crime for which he was imprisoned—the seduction matter.

Q. Did Turner relate the case to him? A. He did, sir.

Q. Will you state as near as you can recollect, the purport of that conversation between them?

A. I cannot relate the language. The purport was that Turner endeavored to make the Judge believe he was innocent of the charge, and told him also about another person who might have been the guilty one. Judge Hubbell replied to him that he would endeavor to give him a fair and impartial trial, notwithstanding he was satisfied of his guilt. That was before the trial of Turner.

Q. Do you know Mr. Charles Keeler? A. I do.

Q. What connection had he with that case of Turner?

A. Well, he appeared and took a very active part in behalf of the prosecution?

Q. Have you seen or heard him converse with Judge Hubbell on the subject of that case?

A. I saw them converse together, and my impression at the time was, that they were conversing about that case; but I did not hear what they said.

Cross Examination.—Q. Turner had been arrested, had he not, on a *capias*, and an order to hold him to bail? A. Yes, sir.

Q. Where did he reside?

A. He was a resident of Fort Wayne, Indiana, I think.

Q. How long had Turner been in jail at the time of this conversation?

A. From the 16th of January, till the 21st of the April following.

Q. Under what amount was he held to bail?

A. The first order was for five thousand dollars.

Q. Now, was not Turner's object mainly to get his bail reduced so as to get at liberty?

A. While they talked together, that subject was brought up about reducing his bail?

Q. Was not the order in fact modified with a view to reducing his bail?

A. The order was modified twice; the first time the bail was reduced from five thousand to two thousand dollars, and afterwards to twelve hundred dollars; then he gave bail and went at liberty.

Q. Was not that a case that excited extraordinary interest and feeling all over Waukesha county?

A. There was a great deal of feeling in Waukesha more particularly, and a considerable over the county. The plaintiff was a lady of very respectable family and appearance.

Q. What was the result of the trial?

A. This was a civil action for damages, and the verdict against him was one thousand dollars and costs.

Q. Previous to this conversation in jail, had you not been several times to Judge Hubbell to tell him of Turner's situation.

A. I was very anxious that Turner should be bailed out, from the fact that he was sick, and I feared, if he had to remain in jail till the November term of the court, he would die. I think I stated to the Judge, perhaps, more than once, that Turner was suffering very much from his confinement.

Q. Did you tell him frequently that Turner wanted to see him.

A. I don't recollect about that.

Q. Did not Judge Hubbell say to him that he wished he would consent to his sending the trial away from his circuit, and that Turner replied, that of all men, he wanted him to try it.

A. The Judge did remark to him that, in substance, he had no desire to hear that case. Turner replied, as near as I can recollect, that he wished to have it tried in Waukesha.

Q. Was it after that remark, that the Judge made the one about giving him a fair trial.

A. I think it was. He said that if Turner was bound to have it tried in Waukesha, he would give him a fair and impartial trial.

CALVERT C. WHITE recalled to specification one, article ten, and produced the records in the following cases:

Lemuel White *vs.* Job H. Martin; Jones *vs.* Davis; State *vs.* Wm. H. Howe; Robert Barker *vs.* Geo. C. Pratt; B. S. Craft *vs.* Margaret Ann Craft; Edwin Jessup *vs.* Reuben D. Turner.

Mr. RYAN. If there are any of these papers which you wish me to read, I will read these; I hardly think it necessary myself.

JUDGE HUBBELL. The paper in relation to the change of bail, in the Turner case may as well be read.

(The paper was read; and also a decree in the case of White *vs.* Martin.)

Q. Mr. White, was it after or before the decree which I have just read in the

case of White *vs.* Martin, that the conversation to which you have testified with Judge Hubbell took place.

A. It was after the decree of sale, and before the final decree. It was while the premises were being advertised for sale by the Sheriff.

PETER ROGAN, called, sworn, and examined, on article eleven, specification seven.

Q. Did you cause a motion to be made in the Circuit Court of Milwaukee county to vacate a judgment obtained by Mason & Converse against yourself.

A. I did.

Q. While that motion was pending, had you any conversation with Judge Hubbell on the subject of that matter.

A. I believe I did, sir. I think it was about the first of April, 1851, the first term after that motion was filed. I went into Milwaukee and happened to meet the Judge on his way up to the Court House. I went in and had a little conversation with him there. I think that after passing the usual compliments of the day, he asked me when I was going home. I told him I had just come to attend to that motion which was then pending before him, and he said probability was, that he would not be able to decide that motion during that term, for the reason that he had not had time to investigate it, and probably would not have; and he advised me if I had no other business there, to save the expense. and not to stay, but to return home. I shall have to state that at the time this motion was filed to set aside the judgment, the property was advertised; and at this term, when I went in, the time of sale was coming on. It was to be held on the following week after I went in. I told the Judge the situation of it—that my property was to be sold on Monday, and that I did not like to have the sale take place until the motion was determined. He told me that I need not apprehend any danger about that; that if he did not decide the motion, he would adjourn the sale. I told him that that was all I wanted. I wanted the sale kept off till the motion was determined. After being assured that he would do so, we separated. I did not go near the Court House at all during the week, although I staid the week out. I told Mr. Orton, my attorney, the arrangement between the Judge and myself, and I supposed the matter would be fully carried out. I think I did not see Mr. Orton after that day until the next Monday; I had some business detaining me and was attending to it, and had not time to call upon him. The next I heard of the matter was on Saturday evening. Mr. Arnold called on me at the U. S. Hotel, and said he was going out next morning to Jefferson with a team, and if I desired I could ride out with him. He made known to me that he was going out to sell the property. He was the plaintiff's attorney. I was a little taken aback at the time and told Mr. Arnold that it was contrary to the arragement, and altogether different from what I understood the Judge. Mr. Arnold and I, I think, had some little words about it at the time. I immediately went up stairs into the Judges' room to know why he had not carried out the understanding. He told me it did not make any difference. He could not postpone the sale, and it would not make any difference inasmuch as the sale would be void, providing the motion should prevail. I told him it would be an inconvenience and incumbrance on my property which I wanted removed, and if the motion did not prevail, I wanted to pay the matter without the sale. That was pretty much all there was about it.

Q. Was there any thing said about your attending the sale to forbid it?

A. I think the Judge told me that in order to make all square, I had better go out the next day and forbid all innocent purchasers from buying, and said that if Mr. Arnold bid it off it would be all right, and it would be void to all others. I believe I did not go out, but telegraphed out on Monday to forbid the sale.

Cross Examination.—*Q.* What was the original suit in which the judgment was entered up, that you filed this motion to vacate?

A. The judgment was obtained on a note against my brother and myself.

Q. There was judgment rendered at the November term of 1837, the second term of the court ever held in Milwaukee county?

A. I do not recollect about that, sir.

Q. On that judgment had a *ca. sa.* been issued immediately after its rendition against yourself and brother James Rogan?

A. Not to my knowledge. I am only aware of it from the officer's return. I was a miner at the time and lived on Rock river.

Q. On that *ca. sa.* was you arrested?

A. I have no recollection of ever having the officer near me. The officer may have returned it so, but I do not remember any thing about it. I know I was very much surprised when I read the writ so returned.

Mr. Ryan. It is the first case I have known of a man's being arrested and discharged, and he not know any thing about it.

Q. Did you make any defence at the time the judgment was rendered?

A. I did not. I can show by Wells and Crocker that they never appeared for me.

Q. Do you know whether on the *ca. sa.* issued, your brother James Rogan was arrested, that he claimed to be a resident of Jefferson county, and was entitled under an act of Michigan then in force to give a bond of limits, and that he did so and went home?

A. I have no knowledge of it, only what I have received from you and Mr. Brown.

Q. Do you know when you were arrested you were discharged by the sheriff, on a rumor then existing that the legislature had then passed an act abolishing imprisonment for debt?

A. I have no recollection of being arrested.

Q. Do you know that all proceedings were dropped until the spring or winter of 1851, when the *fi. fa.* was issued, upon which your property was seized and held for sale?

A. Yes, sir. I think if I recollect right the matter was brought to my notice by you (Mr. Arnold) in 1845. You then spoke to me about it in the streets of Milwaukee one day. It occurred to me, however, that the notes given to Mr. Converse might have been judgment notes. I then told you the circumstances, and that I knew nothing about it; that at the time the judgment notes were obtained I was not twenty-one. I assigned the whole matter to you, and you offered to compromise with me for $125. I told you I thought it was rather high. I told you I would pay a fee rather than go into court and defend it. I took time to think about it, and then told you that rather than to have any fuss I would pay the $125, and then you would not take it. You had been trying to compromise with me for some time, and the first notice I had that my prop-

erty was to be sold, I saw it advertised in the papers. I did not even know that the sheriff had attached it; he went on and attached my real estate when I had sufficient personal property to have satisfied the demand, and the officer knew it, but said he did not dare to take the personal property.

Q. You are mistaken in one thing. Did you ever claim being an infant to me at any time till you filed your motion, to vacate that judgment on that ground; and did you not state to me that you did not care about that judgment now as it was dead from the lapse of time?

A. No, sir! I did not tell you so. I told you I was a minor. I told you I was some eighteen or nineteen years of age. You and I had a long talk about it. There were several others in the office at the time, and I was very particular in setting forth my reasons and my willingness to pay you a reasonable fee, as you said you had never had a fee in the matter. I said, for the sake of, getting rid of it, I would pay $125, but I thought it was too much for barely taking judgment.

Q. No! Were we not seeking to satisfy the whole judgment?

A. Certainly! I was trying to satisfy the whole—your fee and the judgment.

Q. Do you know that I brought a suit against James Rogan and his bail Sanderson, and others upon that bond for the limits?

A. I do not know any such thing. I know Mr. Wm. Brown, who as the agent of Mr. Converse told me that such was the fact—that there was a suit brought against my brother James, for breaking the limits; that he had been employed to prosecute that suit, and that you had no interest in it.

Q. Do you not know the fact that I brought the suit?

A. No! I do not. If you will say so I will believe it; but I have the assertion of Mr. Brown, the agent of Mr. Converse, to the contrary.

Q. That motion to vacate the judgment by reason of infancy, was over ruled, was it not? A. I believe there was no time to investigate it.

Q. Was not the writ of error dismissed?

A. I do not know what the proceedings were in the Supreme Court.

Q. Was it not returned from the Supreme Court with advice to the Judge of the Circuit Court first to receive your affidavit, whether you were an infant, and secondly whether you had confirmed the judgment, and was it not under that advice, that you have never instituted any proceedings?

A. I have not for that reason. Mr. Wm. Brown of Milwaukee, who had formerly been the agent for this Mr. Converse, and who employed you to procure the judgment upon those notes, wrote to me immediately after the matter had been returned from the Supreme Court. He saw it noticed in the Madison papers, and wrote to me to come and see him immediately, saying also that you had gone and was prosecuting the matter without the consent of the plaintiff; that he was the agent of Converse, and if I would come into town, he would settle with me to my satisfaction. In the course of a few weeks I went in and saw Mr. Brown. We agreed upon a settlement for $100. He then had not the power to settle, but he sent on to Mr. Converse, and got a special power of attorney, to settle this particular case. After he had procured that, I paid him $100, and he canceled the judgment on record, and gave me his receipt in full from all liabilities whatsoever. That is the reason why I did not follow it up. I supposed it was settled.

Q. Now, sir, in the mean time, and in the various legal proceedings, do you not know that I paid the costs myself in Milwaukee county, and that I paid the costs of sale on execution?

A. I do not know that. Mr. Brown tells me he paid it.

Q. Well then, it was nothing more nor less than this: a deliberate attempt between you and Mr. Brown to settle the debt, and defraud me out of my fees and my costs?

A. There was no such thing attempted on my part, and I do not think there was by Mr. Brown.

Q. Was there a motion filed a few days ago about that matter, and did you not last night settle with me and pay $400?

A. I did so in order to get rid of the quarrel, and end the whole matter.

Q. Now, in regard to Judge Hubbell's connection with this matter, when the motion was pending on the ground of infancy, that judgment had been lying thirteen years, had it not? A. Yes, sir.

Q. Was not the Judge at the time the motion was pending busily engaged holding a jury term, and did he not take time to consider this matter?

A. I presume it was so. I think it was February or March when the motion was filed, about the first of April was the time I went in. The argument was made, I think in June.

Q. During the pendency of that motion had I not had with you repeated conversations on the subject of compromising and settling this matter?

A. I don't know but you had.

Q. After I called upon you that Saturday evening, did you not have a conversation with Judge Hubbell, in which he advised you to forbid purchasers at the sale; and do you not know that I had stated to Judge Hubbell, and, perhaps, to you yourself, that I should bid that property off in my own name, in such a manner as not to interfere with your acts on that motion?

A. Well, I do not remember entirely about that.

Q. Your motion was pending then? A. Yes, sir.

Q. Were you not assured that if the property was bid off by me it would not affect your rights; but lest some other person should bid it off, he recommended forbidding the sale? A. Yes, sir.

Q. Did he not assign that to you as being a reason for no special hurry in hearing the motion?

A. Well, he assigned that as a reason why, if the motion prevailed, the sale would be void provided you bid it off, because you being attorney in the matter, had a knowledge of my defence: but another innocent person could not have that knowledge, and so he said I had better go out and forbid the sale.

Q. Did I not on Sunday morning, come to you before you were up, and make a proposition to you to compromise it?

A. I think not. I recollect now clearly, a circumstance like that. Mr. James Cross came to me, but you were not there. He said, you had sent him there to know if I was ready to settle. I asked him upon what terms. He said, I do not know what the terms are. Well, I said, there are several propositions between us, and I don't know which one has been accepted. I then said I guess we can't do anything about it to day.

Q. Your time of redemption expired on the 7th day of April last; did it not?

A. I presume it did.

Q. What was the value of the property bid off on that date, or how much did you swear in your affidavit that it was worth?

A. I do not know what it was put down at, probably in the neighborhood of $15,000.

AFTERNOON SESSION.

Mr. SANDERS, on the part of the Assembly, presented the following:

Replication of the Assembly of the State of Wisconsin to the plea and answer of Levi Hubbell, Judge of the Second Judicial Circuit Court of the State of Wisconsin, to the ninth Specification to the seventh Article of Impeachment exhibited against him by the Assembly:

The Assembly, prosecutors on behalf of themselves and the people of the State of Wisconsin, against Levi Hubbell, Judge of the Circuit Court of the Second Judicial Circuit in said State, reply to the plea and answer of the said Levi Hubbell, to the ninth Specification to the seventh Article of Impeachment against him, and say, that the said Levi Hubbell is guilty of the matters and things contained in the said ninth Specification to the seventh Article of Impeachment, by the said Assembly exhibited against him, in manner and form as they are therein charged: And this the said Assembly are now ready to prove against him.

ASSEMBLY HALL, June 24, 1853.

I hereby certify that the foregoing is a true copy of the Replication passed by the Assembly, this 24th day of June, 1853.

HENRY L. PALMER,
Speaker of the Assembly.

(Attest)
D. McKEE,
Acting Clerk.

Mr. SANDERS. This replication the Managers acting with me, ask to have filed in the records of this cause.

ASAHEL FINCH, jr., recalled to specification four of article eleven.

Q. Do you remember a creditor's bill filed by James Kneeland against the city of Milwaukee?

A. Yes, sir. I was employed by the city to defend it.

Q. What steps were taken to defend the city?

A. Well, sir, it is so long since the suit occurred, I cannot remember all the steps that were taken. I think, in the first place, a demurrer was filed either by myself, or yourself associated with me, in the case. I think I did associate you with me. I have not looked at it from that day to this.

Q. Had you, when that suit was pending, any conversation with Judge Hubbell in regard to bringing the questions which were involved before the court?

A. Well! I had a conversation with Judge Hubbell in relation to the suit; or, he conversed with me, I do not know which.

Mr. ARNOLD. Well, which do you think?

A. I do not suppose that there can be a conversation without both participating.

(The transcript in that case was now read to the court.)

Mr. RYAN. There is no demurrer here, Mr. Finch.

A. I think the discussions in the case arose from the injunction. I see

from the reading of the case that there was no vote even upon the motion; but the injunction was finally modified. The injunction was so framed that it did not permit the treasurer either to receive or disburse any moneys. I think the injunction was so modified as to permit the city to receive taxes in money. The Judge called my attention to the bill at one time, and said that the city had better settle the claim. I told him I thought I had a good defence, and that I thought a creditor's bill would not lie against the municipal authorities.

Q. Was there any thingsaid about the complainants being paid?

A. I think Judge Hubbell stated he ought to have the money, and that the city ought to pay its debts.

Q. What was the result?

A. The result was that he advised the city that for the purpose of getting rid of the injunction they had better settle it. The suit was for orders issued by the fourth ward. The bill was filed against the city. The city was sued in its corporate capacity, and made liable for this debt, and it tied up their affairs in such a way, that I thought they had better settle it than to fight it out, and they did so. I had not any doubt that I had a good defence to the bill, and I have now less than I had then. I never had any doubt of it.

Cross Examination.—Q. You said you did not think a creditor's bill would lie against the corporation. Did you argue that question? A. I did not.

Mr. ARNOLD. That is all.

Mr. RYAN. Why did you not argue that question?

A. Well, the question was called up several times during the pendency of this matter after the injunction was issued. The city was very much embarrassed, or at least the treasurer was in his operations, and he had occasion to apply to the court on several occasions to get it up. I supposed there was a motion of demurrer made, but I see no record of it; but we were never able to get up the question. The treasurer prepared a brief upon the subject, and went several times to get it up; what he did I never knew.

Mr. ARNOLD. All he advised with you was that the city had better settle the debt?

A. That is all that I know of it. They paid the debt, I believe, though not the face of it. It was compromised. I obtained the judgment myself against the city. Coon and James commenced the suit and I tried it on their behalf They were the attorneys for Kneeland. I got the judgment against the city fo. Kneeland, then this creditor's bill was obtained upon that judgment, and I war employed by the city to defend them against the creditor's bill. I was city attorney a year; but they employed me especially for this purpose. That was before I was elected city attorney.

Q. Which was the most right, that your acting as attorney for Mr. Kneeland, should recover the judgment against the city, or acting for the city, should allow Mr. Kneeland to recover upon his creditor's bill?

Mr. RYAN. I object to that question.

Mr. ARNOLD. I wish to ask the witness whether he acted with the most faith and the most hope when prosecuting the city to obtain judgment, or when acting for the city to defeat that judgment; and it strikes me that that is a proper question.

Mr. RYAN. Well, I don't know that I will object to that question.

Witness. I do not know that I can answer without stating the facts in rela-

tion to it. The judgment was obtained upon a plea in abatement of damages. Mr. Doran was then city attorney, and put in a plea in abatement. The case came on and the plea was over-ruled. It was a plea of misnomer. Under the authorities that I produced, there was nothing for the jury to do but to assess the damages and judgment was obtained.—My opinion was, and I told them so, that they never could recover it against the city. Mr. Doran did not carry it up, and it was conclusive against the city. That was the end of my services in the case, and it rested for some time. When this bill was filed, I was not at all interested for Mr. Kneeland—in fact I never had any pay for what I did do. When this bill was filed, I told the city they had a good defence, because the bill could not be maintained without hindering the government.

Q. And yet you advised them to settle it, which they did, and you got your pay for that? A. Yes, I was well paid for that.

Q. How was the suit brought?

A. It was brought upon orders issued by the fourth ward, in the name of the city, and upon the form they had adopted. Coon & James supposed the city liable for them.

Q. What was the reason you supposed the city not liable for them?

A. Well, for the reason that by the terms of its charter, the city in its corporate capacity, was not liable for the ward debts. The claim was an honest one.

Q. Was not your defence a technical one—that the municipal authorities could not be sued upon a creditor's bill?

A. The debt, as it then stood, was in a judgment, and, of course, was binding against the city.

Q. Well, then, in point of fact, Mr. Finch, you do not mean to say but that it was an honest one, and that somebody ought to pay it.

A. The orders were properly issued, I suppose, and judgment was pronounced upon them.

Q. When you advised them to pay the debt, did you not advise them, in point of fact, that it was an honest debt, and that they had better settle it up as soon as possible.

A. The principal reason why I advised that was, because I thought the matter would be delayed in that form. It was in the season of collecting taxes, and it would defeat the operations of the city government. They would ultimately have to pay the judgment; and for all these reasons I thought they had better settle it then.

Q. It would not seem to embarrass the city much, to be receiving all that they could get, and paying nothing out.

A. I should think it would be an embarrassment to an honest man to have money in his pocket, and notes standing out, drawing interest, which he knows some day must be paid. The principal reason why I so advised was, that the thing was tied up, and I wanted to get it untied. I thought that was the better way to do it. It was the season of collecting taxes, and a good many thousand dollars were being paid in; some in orders, perhaps, but more in money.

Q. All that Judge Hubbell said to you, and all he interfered in the matter, was to advise you that you had better settle it? A. That was all.

Mr. RYAN. Had not the city a school fund on hand.

A. I think they had; and I think they had a State tax.

Mr. ARNOLD. Was not all the money they received for taxes, such as was necessarily paid by law in money.

A. I suppose all taxes are payable in money, but I suppose they had an arrangement by which they took some orders for taxes—at least they took them from me.

Q. Were there not some five or six, or seven kinds of orders,—bridge orders, road orders, school orders and general city orders. A. Yes, sir.

Q. Were there not also special orders for improvements on streets.

A. Yes, sir.

Q. Was not this injunction so modified as to permit them all to be received for taxes.

A. Well, I do not recollect. The object which I had in view in getting the modification, was to enable the city to receive taxes. I paid my own taxes almost every year, or part of them, in orders.

ALEXANDER MITCHELL, recalled on specification one, article two.

Q. Have you any means of knowing whether the City of Milwaukee had any funds on hand in and before February, 1852—immediately before, I mean.

A. Well, the last week of that month I was requested to see what credit the city had. I looked, and found the amount varying from two hundred and fifty, up to twelve hundred dollars. Those were the minimum and maximum sums from the middle of January to the latter part of February, 1852. That was a credit of the city. I do not know for what purpose, whether for city, ward, or school funds.

The witness was now examined upon specification one, article six.

Q. Do you recollect a proceeding taken by the Attorney-General of the State against the Milwaukee Marine and Fire Insurance Company and yourself as Secretary of it, in the circuit court of Washington county. A. Yes, sir.

Q. Do you recollect of having any interview or conversation with Judge Hubbell on the subject of that suit.

A. Yes, I had such a conversation. I do not know that I could recollect all that was said, it is so long since. I did not charge my memory with it, and I have had so many consultations with counsel and others, that I may confound them. There was an application by the Attorney General for an injunction against the Company, when I was absent from the State. On my arrival in Milwaukee, I understood that the Judge had refused to decide upon the question until after hearing at chambers: Judge Hubbell was then at Waukesha; on his return I saw him, whether by appointment or casual meeting, I do not now recollect. He intimated to me that he had refused the injunction as applied for at that time, and that he could not, consistent with his duty, grant it in the summary way it was applied for, and that when the case came to be determined, he would decide it on its merits, or according to law, or something to that effect. Only on one contingency would he grant an injunction. and that would be in the event of the assets of the company being sent beyond the jurisdiction of the court, and proof given that the company was attempting to evade the proper course of law, or something of that kind. I think that is all that took place between the Judge and myself from the first time I had seen him.

Q. Do you recollect his saying any thing to you about hoping that you would sustain him before the public.

A. Yes, he said he had taken that position, and he hoped I would sustain him. I understood him to mean by that that he hoped I would not be guilty of putting the assets of the company beyond the jurisdiction of the Court. I thought he referred to that particularly in his remark.

Q. Do you recollect any other conversation?

A. I have been in the habit of meeting the Judge casually, I cannot tell how many times.

Q. Do you recollect communicating to him the advice you received from your counsel in regard to obeying an injunction, if one should issue? A. I do.

Q. Will you state the conversation that occurred thereupon?

A. Well, I think that conversation occurred something in this way—it was about the time he was leaving for Madison to hold a court of some kind; I mentioned to him that my counsel advised me that an injunction, issued from Judge Larrabee's court, would not be binding, and they recommended me to disregard it. I intimated to the Judge that I believed that I should not obey it so far as paying the liabilities of the company as fast as they were presented was concerned. I think the Judge intimated disapproval of disobeying the powers of the court. I do not know whether he disapproved of Judge Larrabee's course. He intimated that we had better get the injunction dissolved at once, rather than disobey it. The conversation took place about the time of his going to Madison, and my impression is, that I made an objection against obeying the injunction, because of the delays that might occur on account of his absence. I thought that would create great inconvenience. The Judge replied something like this—that he might be telegraphed to, and he would return instantly to Milwaukee.

Q. Did Judge Hubbell say any thing to you about his dissolving the injunction, if one should be issued by Judge Larrabee?

A. I would not say that he said so in so many words, but the inference in my mind was, that he would dissolve the injunction. The impression in my mind, from the connection in the conversation, was that the object of his return would be to dissolve the injunction, but I cannot recollect the words.

Q. What is your recollection as to the fact whether he did use any words to direct that meaning to your mind?

A. I have been reflecting upon that since I was examined before the committee, and I cannot fix upon any words. I know that I thought about the difficulty that would occur from obeying the injunction in his absence, but I cannot, on reflection, say that he did say that he would dissolve the injunction. I do not see how it would have come naturally in the conversation for him to say so.

Q. What was your recollection about it last winter?

A. I went before the committee last winter without knowing what I was to be examined about, and this whole matter had escaped my mind. I only recollected the conversations as the questions called them up. I then recollected that the matter had been upon my mind that he would dissolve the injunction, and still the same impression is upon my mind that he would dissolve the injunction, or such would be the result.

Q. Was there any thing said or intimated by Judge Hubbell, in any conversation which you had with him, about any offers which had been made to him in the suit?

A. I think in the first conversation I had with Judge Hubbell, a belief was entertained that the real object of that proceeding was to get possession of the assets of the company for certain parties as receivers. I think the Judge intimated to me that some obscure hints had been thrown out to him, which might result to his advantage, or from which he might derive some benefit; but they were quite obscure, and I did not get their drift.

Q. Did he name the parties?

A. My impression is that he did, though my recollection is not distinct that he did.

Cross Examination.—Judge HUBBELL. You say you were absent when the first application was made to the Judge? A. Yes, sir.

Q. Was it not rumored about Milwaukee, even in my absence, that an applicationfor a special injunction had been made to the Judge?

A. I was absent, and the first intelligence which I had of it was by telegraph, and on my return I ascertained it to be so.

Q. You stated, if I understood you, that the Attorney General then renewed his application at chambers?

A. My impression was, that an application had been made, which was refused, and then a new application was made, and you refused to decide on the matter until after a hearing at chambers.

Q. Do you not remember that I told you I had given the Attorney General a written answer, and that I told you the contents of it?

A. I believe you did, and I think it was afterwards published in the newspapers.

Q. Was not a ground taken in that answer, that there was a rule of Court which precluded the granting of injunctions only in cases of emergency, and in that answer did I not state to the Attorney General that the rule would not permit me to grant an injunction in that case; but that in case the corporation should be found taking any steps to remove its funds out of the jurisdiction of the Court, then an injunction should be granted? A. Yes, sir.

Q. And then it was, that I said that I hoped you would justify the confidence I had in you, and not steal your funds away?

A. That is what I testified to.

Q. And did I not state to you, that if an application should be made to me, I would hold Court, and decide it according to law, upon its merits?

A. I do not recollect the contents of the statement. I think you did intimate to me that the Court would be in session in Milwaukee, and you would be prepared to hear it upon its merits. My counsel were Messrs. Ryan and Brown.

Q. A few days after this an application was made to me for an injunction—was there not—and I refused to grant it except upon notice?

A. I believe that is so.

Q. Was there a bill filed in Washington county, and did you get a notice to that effect? A. I did, in a few days.

Q. Well, sir, did you send your counsel go up to argue the case?

A. I did. Messrs. Ryan and Brown, I believe, went.

Q. Did they take the position, that Judge Larrabee had no jurisdiction in that case?

A. I do not know whether they appeared there so far as that. We had a good deal of talk about that.

Q. Did you not understand so from them?

A. They advised me that the point of jurisdiction was discussed.

Mr. Ryan. I did it as *amicus curiæ*, and not as counsel.

Witness. I think they gave me thisopinion. Their opinion from the commencement was, that Judge Larrabee had no right to issue the injunction.

Q. Were you expecting an injunction?

A. Well, it was thought among the possibilities.

Q. And in view of that possibility, they advised you to disobey it?

A. They advised me to disregard an injunction from Judge Larrabee.

Q. Do you recollect meeting me in the street, and asking me if I was going to be at home a few days? A. I think I do.

Q. Do you recollect of telling me that you expected an injunction from Judge Larrabee's court?

A. I think I said, as I have already testified, that it was among the possibilities. It was immediately before your going to Madison. At what period of the conversation it came up, in reference to your absence, I do not recollect, but I think it came upon my mentioning that there would be no one here to act in the case to dissolve an injunction, if one should come out.

Q. Did I not tell you that I did not like to see a process of the court disobeyed, and that I hoped you would not disobey it?

A. I have testified that you did.

Q. Did you not tell me that it would be very embarrassing to have an injunction close up your institution?

A. I said that parties over the country might suffer by the injunction. You told me to telegraph you to return, and you would return instantly, and ride day and night, if necessary, to get here.

Q. I wish you would recollect if I did not say that I would come home and hold a Court, and if the injunction was wrong it would be dissolved of course. Do you remember that I said any thing different from that?

A. I do not. I was looking to getting rid of the injunction. That was partly my object in speaking to you.

Q. Was there ever an injunction issued out of that Court?

A. None that I know of.

Q. What became of the case?

A. It may be there yet for ought I know. I do not know but it is pending still.

Q. Did you tell Mr. Ryan or Finch about this?

A. I had so many consultations with my counsel, that I do not recollect. It is, however, quite likely that I went and told them what you told me.

Q. Do you remember of telling anybody else?

A. I have no recollection of doing so.

Q. Do you know how that important conversation between you and me got out, unless it was told by you.

A. I cannot tell. I may have told it to some friend. I did not know there was any thing private in it. I think the chances are, that I must have told my counsel; but I have no recollection of it.

Q. Do you think that at that time, or not until a year or more afterwards, I intimated to you that offers were made to me, or told you the name of the person who was to receive the assets?

A. I do not know. I had the impression that it was at that time, but I was not sure.

Mr. ARNOLD. What was the result of the application before Judge Larrabee?

A. There has never been any thing done in the matter. Mr. Attorney General Coon sent up a discontinuance, but Judge Larrabee refused to allow him to discontinue the proceeding.

Q. How happened the Attorney General to send up a discontinuance?

A. You must ask the Attorney General.

Q. I wish you would state to the Court on what gounds you felt anxiety at the prospective closing of your doors?

A. It was on public grounds nearly wholly. The accounts being closed for even a limited time might make parties suffer discount. It would have knocked our currency down, and induced a great many to have sold at a discount.

Q. So far as you were concerned, you could not have been hurt by the injunction, you could not have been hurt by a run upon the bank?

A. I should not have suffered much.

Q. Would it not have been a big job to have paid out and received?

A. This was at a season of the year when we had a large amount of flour and other products in hand, and a man so disposed might have made a fat job out of the settling up. The indebtedness to us was the most extended at that season of the year.

Q. Do you know whether any notice of an injunction was served upon you?

A. I do not.

Q. Was there any from Judge Larrabee's court?

A. There was, and my counsel went up there, and appeared as *amicus curiæ*, but not as counsel on the question of jurisdiction.

Mr. RYAN. Have you any recollection of having told that conversation with Judge Hubbell to any one prior to your examination before the committee?

A. I cannot tell. I have no positive recollection upon the subject.

Q. Were you not questioned about that suit, and asked to detail all conversations on the subject of it?

A. I think, as I before stated, there was some portion of it which I had forgotten.

Q. When you had that last conversation with Judge Hubbell in relation to the dissolution of the injunction, in which he said that if telegraphed he would come back immediately, riding day and night if necessary, as you have stated, had you any doubt that if the injunction was allowed, it would be dissolved by Judge Hubbell?

A. That was the impression that I had, that it would be dissolved without question.

Mr. ARNOLD. On what grounds, and for what reason, did you suppose that Judge Hubbell would dissolve that injunction if he returned from Madison?

A. Well, I do not know on what ground. The conversation was in reference to the delay and the bad effect of an injunction upon the public, and in answer to that he was to return; and it was also somewhat on the question of jurisdiction. I understood that the Judge coincided with my counsel as to Judge Larrabee's right to act in the matter.

Q. Who in the committee room put to you these questions?

A. Mr. Ryan.

Q. Was Mr. Ryan your counsel in this injunction matter?

A. I talked with him as much as any one.

Q. Now in any of these interviews with Judge Hubbell—I will ask you directly the question—whether you ever promised to pay him any thing, whether he ever asked or intimated that he would like to be paid any thing, or whether there was any understanding, direct or indirect, in any way, that he was to receive any money at your hands? A. None, whatever.

Q. Has he ever asked you for any thing? A. Never.

Q. Has any body else for him? A. No one, to my knowledge.

Mr. RYAN. Have you any recollection whatever of having told any part of that conversation with Judge Hubbell, to me?

A. I do not remember how far I spoke to my counsel about the conversation at all. I may have told them all, or I may have told them none.

The cross bill filed in the case of Baasen vs. Anderson was introduced in reference to specification one, article seven.

Also, the petition and testimony in the case of W. W. Wyman against his wife, which were read.

W. W. WYMAN was called, sworn and examined on specifications three and nine, article seven.

Q. Were you, in the fall of 1849, about to, or intending to, institute proceedings to obtain a divorce from your wife?

A. Yes, sir, I was calculating to do so.

Q. Had you the possession of any affidavits touching the grounds of your application? A. I had two affidavits.

Q. Did you leave these affidavits with this John Catlin who appears in this record as your attorney.

A. I showed them to him first.

Q. Had you any conversation at any time after you gave them to him with Judge Hubbell, on the subject of your right to get a divorce?

A. Yes, sir, I had.

Q. In that interview did Judge Hubbell tell you that he had seen these affidavits. A. Well, sir, I cannot say that he did.

Q. For what purpose did you give the affidavits to Mr. Catlin?

A. I gave them to him and requested him to give them to Judge Hubbell to see what could be done.

Q. Will you relate to the court your conversation with Judge Hubbell at that interview?

A. Well, I called at the U. S. Hotel, at his room. I am not positive whether I introduced the subject, or he. I was very anxious about the result. He said that on the affidavits he could not grant a divorce. He said they did not come up to the point to warrant him in doing it. He said there was nothing definite in them. I understood him to say that he had learned, or understood by my then wife, or her friends, and I think both, that I had neglected to provide the house sufficiently; had been away a good deal, and she had been left there sick and not provided for. He said if she could make that appear in proof, and substantiate it, he could grant a divorce in her favor, if I would consent to it. I cannot relate it exactly in his words.

Q. Did he say whether or not her procuring a divorce would answer your purpose, or your ends?

A. I asked him if I took that course if I should be at liberty the same as she—if I should have the same privileges as she—and he said he could fix it so. I told him I would make no objection to that. I told him that if I could not get it in my name, as I wanted it, I wanted it in her name. I wanted a divorce at any rate, if possible.

Q. Have you those affidavits and papers? A. Yes, sir.

Q. Did Judge Hubbell in that interview speak to you about the contents of those two affidavits?

A. I am not positive whether I had them with me at that interview or not.

Q. I understood you to say that Judge Hubbell spoke to you of them, or that he had seen them before? A. He did, and had.

Q. Do you recollect whether you took these affidavits away with you?

A. I do not.

Judge HUBBELL. I never saw them.

(The affidavits were produced.)

Mr. RYAN. I never read them.

Mr. ARNOLD. I never did.

Mr. KNOWLTON. I never did.

Judge HUBBELL. I never did. He never showed them to me, and if he swears so, he swears to a lie.

Witness. These were the only affidavits I had, or knew of, in reference to the subject of my divorce.

Judge HUBBELL. Was it in regard to the subject matter of these papers that I spoke to you?

A. They must be the papers, because I have no others.

Mr. RYAN. I now offer these affidavits as evidence in this case.

Mr. ARNOLD. They are objected to.

Mr. RYAN. I do not know in what form they can be presented to the court.

Mr. ARNOLD. I object to the reading of these papers, not having seen them, and I understand from the counsel that he has not seen them, because they do not seem to be at this period properly offered in evidence. The allegation contained in the specifications in connection with these papers is—"and that he the said Levi Hubbell did afterwards permit the said William W. Wyman, who was also solicitous to obtain a divorce from his said wife, to exhibit affidavits to him in support of such divorce, and did thereupon advise the said William W. Wyman that such affidavits did not establish grounds for a divorce," &c. The allegation is, that knowing that Mrs. Wyman was desirous of obtaining a divorce, the Judge afterwards permitted Mr. Wyman to exhibit certain affidavits to him in support of a divorce on his part. There is no proof that these papers were presented to Judge Hubbell. The witness says distinctly that he cannot say whether Judge Hubbell had seen the affidavits or not. He had given them to Catlin to give to Judge Hubbell; but it is not shown that Catlin did give them to Judge Hubbell. The witness says the Judge had either seen them or he himself had them with him. Now he says he could not say that the Judge had seen them, but that there was some conversation about some affidavits. It does not appear that he exhibited these papers, or that they were exhibited to Judge Hubbell at all—that is the point of the objection.

Mr. RYAN. The testimony of the witness is, that prior to his interview with Judge Hubbell he gave these affidavits to his attorney, Mr. Catlin, to show to Judge Hubbell.

Mr. ARNOLD. I think he did not state so.

Mr. RYAN. I understood him so. Mr. Wyman how is the fact.

A. I intended that they should be handed to Mr. Hubbell.

Mr. ARNOLD. He says he *intended* that they should be handed to him.

Witness. That was the understanding. I gave them to Mr. Catlin to show to Judge Hubbell, when he should return to Madison.

Mr. RYAN. The testimony of the witness is, then, that he gave these affidavits to Mr. Catlin to exhibit to Judge Hubbell, and the answer itself to this specification, state that "sometime before this respondent knew or had heard that any proceedings for a divorce were contemplated by said Eliza C. Wyman, John Catlin, Esq., did call on the respondent representing himself as the attorney of the said Wm. W. Wyman, and did offer to read to this respondent certain affidavits, proposed to be made the foundation of a suit for divorce by the said William."

Now, sir, the witness goes on further and says that he conversed with Judge Hubbell about those affidavits. The statement of the respondent neither admits nor denies the reading of the affidavits. The witness goes on and states that Judge Hubbell spoke to him on the subject of the affidavits, and testifies that the Judge said they were not sufficient grounds for granting a divorce; and that he either had these affidavits with him at that interview or Judge Hubbell had seen them, because he spoke of their contents.

Now, I regard it as immaterial whether the witness produced them with his own hand, or whether he did so by his attorney. What he did by his attorney he did himself. If he gave them to his attorney for the purpose of their being produced in the presence of the Judge, he did it himself; and if the Judge did afterwards converse with him about them, the specification is proved. The witness is indistinct in his memory, and says he cannot recollect whether he took them himself or whether it had been previously arranged with his attorney, that the Judge should see them; but one or the other had been done; and for the purposes of this specification, it is immaterial which had been done. At all events it seems to me that those papers being identified, they are necessary to the understanding of the conversation; and I do not see how the counsel can have any doubt that these are the affidavits spoken of. They are a part of that conversation in writing, and as such we ought to give them to the Court. The *gravamen* of this specification, Mr. President, is based on the Statute, that no Judge, Commissioner, &c., shall be allowed to give any advice on subjects on which he has reason to believe will be brought before him for decision. Now, there is proof by the witness of advice and consultation upon the subject of this divorce suit, and these affidavits were at least a part of the foundation and inducement to that conversation and advice, and I think the affidavits are necessary to the proper understanding of the advice and consultation; but it is a matter that rests in the discretion and sound judgment of the Court to decide whether they shall be introduced or not.

Mr. ARNOLD. Mr. President, the charge of article 7, is, "that the Judge in the exercise of his judicial functions conducted himself with undue and unjust partiality and favor to particular suitors in the Courts before him." That is the charge under which this specification is found. Now, I am instructed by the respondent to say, that he has not seen or read the affidavits which are now offered to the Court, and whatever he may have known of these or some other

papers, must have been communicated to him by Mr. Catlin. But what the *gravamen* of that story is, I hardly know.

Mr. RYAN. I said that the *gravamen* of that part of the charge related to the Statute.

Mr. ARNOLD. I do not know how many *gravamens* you have. I now learn that it is for doing an illegal act in giving advice to a suitor—to a party to a suit or one who was about to become such. If so, I can only say that the specification is wrongly placed, and should have been under another charge in the list. Again, the specification opens in this way: "that the Judge knowing that one Eliza C. Wyman, the wife of one Wm. W. Wyman was living apart from her said husband, and was desirous of obtaining a divorce from him, had, contrary to public decency and his duty and obligations as Judge, a private and indecent interview with her, and in such interview, did counsel and advise with her in relation to such divorce; and that the Judge did afterwards permit," &c. Now, before this can be strictly pertinent evidence, it appears to me that the proper foundation should have been the proof that Mrs. Wyman was an applicant for a divorce, and that the Judge had counselled and advised with her, in relation to such divorce. That I believe has not yet been shown.

Mr. RYAN. It has been partly shown.

Mr. ARNOLD. I believe the witness has answered, that in the conversation between him and Judge Hubbell, the Judge stated that Mrs. Wyman had complained of desertion, and that she could get a divorce, but nothing has been proved of any private or indecent interview.

Mr. RYAN. That is true, but we propose to follow it up by other testimony on that point.

Mr. ARNOLD. Well, at all events, it appears to me, that until these papers can be identified, this proof should not be admitted. There is no proof yet that these papers were exhibited to Judge Hubbell either by Wyman or Catlin; but that Wyman spoke to the judge something about these papers and he answered it.

Mr. RYAN now moved that the affidavits be received by the Court as evidence, and the question, "shall the affidavits be read to the Court," having been put it was decided in the negative. Noes 13, ayes 11.

Mr. RYAN. At the time of that interview with you and judge Hubbell, were you and your wife living apart? A. Yes, sir.

Q. How long had you been so living?

A. I cannot say. It must have been some two or three weeks—perhaps more.

Q. Was that conversation before your wife filed a petition for divorce?

A. Yes, sir—before any thing I knew of her filing one.

Q. Was it before Oct. 31st, 1849? A. I cannot state any date so long ago.

Q. How long was it after these affidavits were sworn to?

A. The papers were sworn to in September, and this was before Judge Hubbell came out to the fall term. Judge Hubbell was not here when they were taken.

Q. Was it during the fall term, that you had that conversation with Judge Hubbell?

A. I think so. I believe it was when he was here attending Court.

Q. Did you put in a defence of any kind to the divorce suit.

A. No, sir, I requested one of my attorneys to be present, and told him I

should not object to any thing, unless it was something against my character, farther than was in the papers.

Cross Examination.—Q. Were you not mainly interested in the subject of alimony, in the conversation with Judge Hubbell.

A. That was one thing I conversed about with Judge Hubbell.

Judge HUBBELL. No, sir, no, sir! You must think before you testify to any thing so long gone by. Did you not attend to the case and follow it up closely till that was arranged?

A. There was a good deal said about what I was to pay.

Q. Was not that a matter between you and your counsel, and her counsel?

A. It was settled between the counsel. Judge Hubbell mentioned what he would do if it was left to him; but it was not left to him. It was mentioned in the interview.

Q. Before the bill was filed? A. Yes, sir.

Q. What did you mean by asking the Judge if you would be equally at liberty with your wife?

A. I knew that in some States the party the divorce was against could not marry again.

Q. You were looking to the main chance. A. Yes, sir.

Q. Did you marry, soon after.

A. The decree was granted in December, and I was married the next May.

Mr. RYAN. At what amount did the Judge say he should fix the alimony, if it were left to him?

A. He said he should put it at two or three hundred dollars, or somewhere in that neighborhood.

Mr. ARNOLD. At this interview then that you had the first time with Judge Hubbell, at the "States," and before Mrs. Wyman applied for a divorce, you say that the Judge told you distinctly what he should do if the matter of alimony were left to him? A. I do.

Q. Who introduced the subject of alimony? A. I do not remember.

Q. Did he not go through the whole case, and tell you all about it, and describe to you all the orders he should make?

A. I do not know that he did.

Q. What did you say, when he said he should fix the alimony at two or three hundred dollars?

A. I told him it was more than I ought to pay, and I objected to it.

Q. What bargain did you and the Judge make?

A. We did not make any bargain at all.

Q. How much were you worth at that time?

A. Well, that is more than I can say.

Q. Well, can you not give as good aguess at it as you have at some other things? A. I cannot say.

Q. How much was it settled that you were to pay?

A. The bargain was made that I was to give $100 and pay the costs. There was no alimony put in the decree.

Q. Well, you have an idea of about how much yon were worth at that time. How much was it?

Well, from $6,000 to $9,000, if I could get what was owing to me.

The Court adjourned till next morning at 9 o'clock.

SEVENTEENTH DAY.

SATURDAY, June 25.

MORNING SESSION.

Mr. WYMAN resumed the stand.

Mr. KNOWLTON. Is your memory very distinct in relation to the conversation you speak of with Judge Hubbell? A. It is quite distinct.

Q. You say you conversed with him in relation to the subject matter of the affidavits which you had previously gotten up and handed to Mr. Catlin?

A. It was in reference to the affidavits, and upon the subject of getting a divorce.

Q. Do you recollect of stating yourself, what those affidavits contained?

A. I do not recollect of stating the facts they contained.

Q. Do you recollect of Judge Hubbell's going on and telling you what they contained?

A. I do not recollect of his telling all they contained.

Q. Did he tell you any thing?

A. He said those affidavits did not contain any offence for which he could grant a divorce.

Q. Was there any thing more that he told you?

A. There was more conversation. I do not remember what. I cannot point out any thing distinct besides that.

Q. Had your wife filed a petition for a divorce before that conversation?

A. Not that I know of. I had not heard any thing of it.

Q. Did Judge Hubbell state to you that he had heard that she was about to apply for a divorce, and that you had treated her cruelly?

A. I do not recollect any such conversation.

Q. If he had, would you be as likely to remember that as any other conversation that transpired?

A. I do not know but I should.

Q. Well, sir, an intimation to you that you had abused your wife, would not be as likely to make an impression on your mind as some other subject matter?

A. I should suppose I would be as likely to remember it.

Q. Do you recollect of telling Judge Hubbell that your wife had made complaints that you had abused her, and neglected her?

A. I do not recollect that I did.

Q. Do you recollect of your stating to Judge Hubbell that she was about to apply for a divorce?

A. No, sir; nothing of that description.

Q. Will you undertake to reconcile, before this Court, the statement you now make, with the statement you made yesterday, that if she could prove this abuse and neglect as a ground of divorce, she could get a divorce, and that would answer your purpose?

A. Yes, sir, that was stated.

Q. Did you have any conversation with your counsel, Mr. Catlin, previous to your interview with Judge Hubbell, in relation to this matter of divorce?

A. Yes, sir; I had.

Q. Did you talk over the grounds upon which you supposed you could get a divorce?

A. Yes, sir. These affidavits were mentioned, and we talked over their contents.

Q. How long previous to the divorce? A. I cannot say.

Q. Is your recollection as good upon that subject, as upon the conversation you held with Judge Hubbell?

A. I don't know any difference, I talked with Mr. Catlin, and also with Mr. Hubbell.

Q. Yes, but that is not the thing I am enquiring about. I want you to state how long before?

A. I say I cannot tell how long.

Q. Then I ask you if your recollection is as distinct about that, as about your conversation with Judge Hubbell, and you think it is; now, if it is, will you tell us how long it was? A. I cannot tell.

Q. Did you have more than one conversation with Judge Hubbell?

A. I don't recollect that I ever did.

Q. How long was that conversation?

A. It might have been half an hour, and might more.

Q. Was it over five minutes? A. It was.

Q. Can you tell whether it was more than ten minutes?

A. I should think it was more than ten minutes.

Q. Was it a short interval or a long one? A. Well, it was not very long.

Q. You say you went to Judge Hubbell's room? A. Yes, sir.

Q. He was not in Court, then? A. No, sir.

Q. Who commenced the conversation? A. I think I did.

Q. Don't you recollect that you went there, and commenced complaining in relation to the conduct of your wife, and then commenced telling over the grounds you relied upon for a divorce, and named some affidavits?

A. I recollect talking about the affidavits. I don't recollect that I commenced complaining about my wife, or of Judge Hubbell complaining of her.

Q. How was it then, that this conversation transpired about your abusing her?

A. Judge Hubbell told me he understood that that was my conduct. He said he could get a divorce if she could substantiate the evidence.

Q. Did he say he could do that in case you would consent?

A. The understanding was, if I would consent?

Q. I did not ask about your understanding. The question is, whether you recollect of his saying so. Whether you can swear now that he did state so?

A. Well, sir, it is my impression that he said if I would consent to it, I could get a divorce; but I am not positive.

Q. You formed the conclusion that it would advance the matter if you did consent? A. Yes, sir.

Q. Living with that woman became an intolerable burden to you, did it not?

A. I did not want to live with her. It was not very agreeable in the family, I assure you.

Q. Will you state to the Court now, whether you did not immediately after having had that interview with Judge Hubbell, go off and publish those affidavits in hand-bills and distribute them through this country?

A. I don't recollect the time I had them published. There were some printed and some distributed.

Q. Was that done by your request? A. Yes, sir. I got them printed.

Q. Who distributed them?

A. I do not know of any one except what I distributed myself. I might have given some to my friends, because I thought I ought to do something to show my friends I was not altogether to blame.

Q. Was that after the divorce that you had them printed?

A. I think they were printed after, but I cannot say.

Q. I understand you that at the time you had this interview, you and your then wife did not live together?

A. We did not. We had been separated something in the neighborhood of three weeks.

Q. Did you and that woman ever get upon friendly terms afterwards?

A. I think I never spoke to her afterwards.

Q. After that, then, you did not have an arrangement with her about getting this divorce?

A. The arrangement was made with her friends.

Q. I ask you this simple question—whether after you had this interview with Judge Hubbell, you did make arrangements with the friends of your then wife that you should have a divorce?

A. I did not do it personally. I did it through counsel. I think there was such an arrangement made.

Q. Do you recollect whether you directed them to do so?

A. I cannot say what direction I made, but I know it was fetched about. It is so long ago I can't possibly say what arrangements were made. It was after I had an interview with Judge Hubbell.

Q. Do you recollect of having your counsel, Mr. Abbot, go and cross-examine the witnesses? A. Yes, sir.

Q. Do you recollect giving him any directions to object to a particular species of evidence if it was offered?

A. I think it is likely I said this: I would not like to object to any thing they would lay down, unless they went beyond what I had heard.

Q. Except what was in the bill you mean?

A. There was no bill. I had seen no bill then.

Q. What do you understand by the word *bill* here?

A. You mentioned the bill first, yourself Mr. Knowlton.

Q. What do you mean by that—that there was no bill?

A. I understood there was an order, authorizing the taking of testimony; I don't of any thing else.

Q. Did you understand that that order contained any thing about a certain kind of testimony?

A. No, sir; I told you that Judge Hubbell told me, that he had learned by her or her friends, that they could prove those things alleged against me; and he said if they could it could be granted on those grounds. I might have seen some other grounds.

Q. Now recollect and see if you did not hear of the charges preferred against you from other individuals besides Judge Hubbell?

A. I think very likely I had heard rumors of what they said.

Q. Do you recollect that your counsel ever told you the substance of the charges against you? A. He might or he might not?

Q. But from the flying reports, you directed your counsel to go and if they did not attempt to prove any thing beyond that, to let them go; but if they went beyond that, to object?

A. I do not positively recollect what I did direct about objecting. I know I told him I would not object to any of those things they had fetched up. I don't recollect of telling him to object against any particular testimony.

Q. Were Catlin & Abbott partners then?

A. I think they were. I don't recollect whether they gave me any information before I went to talk with Judge Hubbell.

Q. Do you recollect how you got possession of those affidavits after you handed them to Mr. Catlin?

A. I wish to be qualified on that statement. I wish to state that I showed the affidavits to Mr. Catlin. It is possible that I did not leave them with him, but it is my impression I did.

Q. Do you recollect of his ever handing them back again? A. No, sir.

Q. Nor of Mr. Abbot's doing it? A. No, sir.

Q. I asked you yesterday if you could testify that you showed them to Judge Hubbell?

A. No, sir, I cannot state that; it was my impression I had them with me; but I cannot say whether I did or not.

Q. Were you before the Committee last winter?

A. Yes, sir, I was before them once. I should have been understood there, that I had seen Mr. Catlin and showed him the affidavits; but I was not positive whether I left them with him.

Q Now, did your counsel, yourself, or any one under your direction, make any other arrangement about that divorce matter, with the exception that you should pay alimony—any arrangement made with your wife, her friends or attorneys, with the exception of alimony in case a divorce was granted?

A. I do not know what arrangement was made. My counsel, Mr. Abbott, went to hear the testimony.

Mr. KNOWLTON. Well, that don't answer the question.

A. There must have been some other arrangement besides the alimony or it could not have gone on.

Q. Well, that is reasoning upon the subject. We propose to reason upon the matter after we get the facts. Do you *know* of any other matter of arrangement than that?

A. I cannot recollect exactly that there was any other arrangement.

Q. You don't recollect about the alimony even?

A. Yes, sir, I recollect about that.

Q. Do you recollect any other arrangement?

A. I don't recollect any particulars about any other arrangement.

Q. Do you recollect any generals?

A. As I said before, there was an arrangement between my counsel, and her friends, to bring about this affair.

Q. Was it made by your counsel? A. I don't know.

Q. Was it made by yourself?

A. No. I said it was made by mutual friends. It was done—I can't recollect how it was fetched around.

Q. Did you direct anybody else except your counsel?

A. Yes, I directed Mr. Seymour. I don't recollect anybody else.

Q. You do not recollect whether it was Catlin, Abbott or Seymour, who made the arrangement?

A. I don't know about the arrangement.

Q. You don't know which of the three individuals made the arrangement?

A. I do not.

Q. Was anybody else employed to make the arrangement?

A. I cannot say who was employed, more than my counsel, or any thing about it.

Q. You cannot say which of these three individuals?

A. I do not recollect what the particulars of the arrangement were.

Q. That is another thing. I asked you which of the three made the arrangement? A. I do not know. I cannot recollect now.

Q. Well, if you do not recollect that, how do you know an arrangement was made? A. Well, I don't know.

Q. It amounts to this, then, that you know a divorce was granted, and you paid a hundred dollars as alimony—that is about all you know about that whole affair? A. Yes, I know they took testimony.

Q. Well, then, those three facts are all you know about the arrangement?

A. I cannot tell the particulars.

Q. Well, do you remember any thing in general more than that.

A. I cannot recollect any thing more.

Q. Do you recollect the arrangement about the amount you were to pay as alimony—do you remember that an arrangement had been made by your counsel that a divorce should be granted, and the amount you were to pay?

A. I do not recollect as there was.

ALBERT C. INGHAM called, sworn, and examined to the same article and specification.

Witness. I reside in Madison; I know Judge Hubbell.

Q. Do you know Mr. Wyman, the last witness, and his late wife?

A. I know Mr. Wyman, and have seen his wife.

Q. Do you recollect the time when there was a proceeding between them for divorce?

A. I recollect of being informed of a proceeding for divorce, and I recollect the time.

Q. Where did you board? A. At Mr. Seymour's.

Q. Do you recollect Mrs. Wyman being at Seymour's house in the fall of 1849?

A. I recollect it was at some time—the time of the year, month or day, I cannot say.

Q. Was it about the time a divorce proceeding was pending?

A. It was either before or after; but sometime in that neighborhood.

Q. Do you recollect of any gentleman calling on Mrs. Wyman in the evening while you were boarding at the house there?

A. There was a gentleman called at the house, and I understood he called to see Mrs. Wyman. I did not see him go into the room, and did not know that he did go, of my own knowledge.

Q. Do you know how late that gentleman staid in the house? A. I do not.

Q. How long are you able to state that he staid?

A. Until recently I supposed that he staid late; but I have been assured—

Mr. RYAN. No matter what you have been assured—what is your memory?

A. My memory is, that he staid from nine till eleven o'clock; but it has been shaken very much by what I have been told by others. I still, however, remain somewhat of that belief.

Q. Did you have any conversation with Judge Hubbell on the subject of that interview?

A. I have had a conversation with some one, but whether it was with Judge Hubbell or others, I am not certain. I have all along supposed it was with Judge Hubbell.

Q. Has there not been some tampering with your memory?

A. There has been no tampering with it. It is my impression I did have a conversation with Judge Hubbell.

Q. Well, what took place at that conversation?

Mr. KNOWLTON. I think you had better establish the fact, that he did have a conversation with Judge Hubbell before you ask what took place.

Mr. RYAN. The witness does state that that is his impression.

Mr. KNOWLTON. Well, I object to the question, until you establish the fact beyond a mere impression, that he did have a conversation with Judge Hubbell.

Q. Will you tell us then whether or no you did have a conversation with Judge Hubbell?

A. When I testified before the committee, I stated that I did have a conversation with Judge Hubbell; since that I have been somewhat shaken, and I do not positively recollect.

Q. Do you recollect what you supposed took place in that conversation?

A. I think the Judge said to me that he had been sent for to come down to Seymour's, and inasmuch as there were a number of malicious men seeking all they could against him, it would be well enough not tosay any thing about it.

Q. Did he state for what purpose he called there? A. I cannot say.

Q. In that conversation, did Judge Hubbell speak to you of Mrs. Wyman?

A. This took place some years ago, and if he did, it has passed from my mind. I cannot recollect any thing about it. I thought of it, perhaps, for a day or two, and dismissed it from my mind.

Q. Did you testify before the committee, that the next day, after you observed the gentleman there, Judge Hubbell said to you that he had called there at Mr. Seymour's request, and as he had a good many enemies, it would be as well not to say any thing about it?

A. If I did, it is upon the record. That is my remembrance; but since that time I have had occasion to look over the matter more fully; have talked with other witnesses upon the subject, and have been led to doubt the correctness of my memory.

Q. Well, is what you said then, the truth now?

A. I have a recollection that some conversation of that sort took place. My memory is not good upon the point at all, as it took place years ago.

Q. Who have you talked with?

A. I have talked with Mr. Seymour, with Mr. Atwood, with Judge Hubbell, and with divers other persons.

Cross. Examination.—Q. You are not able to state, you say, when that interview took place—whether at the time, or before the divorce proceedings?

A. No, sir. It was not in the winter—that is, there was no snow.

Q. You have not yet told us who the gentleman was, who called to see Mrs. Wyman? A. I supposed it was Judge Hubbell.

Q. Why do you say "supposed?"

A. Because I have a vague remembrance that it was him. I cannot positively say whether I had that conversation with him or with somebody else.

Q. At the time, were you acquainted personally with Judge Hubbell?

A. Yes, sir.

Q. Then you certainly ought to know whether you recognized him?

A. My remembrance is, that I did not at the time know it was him. It was a matter of common talk in the house that he was there.

Q. Did you know, of your own knowledge, who it was, or what he was there for? A. No, sir, neither.

Q. Then all you know of what he was there for, or who it was, you know from others? A. From him or from others.

Q. Why do you say that?

A. Because I do not say positively, that I did not talk with him. My memory is shaken on that point.

Q. Are you confident that that conversation was with Judge Hubbell, or Seymour, or Atwood?

A. It was not Atwood. In conversation with them since, they deny ever having any such conversation with me, in such a manner that my remembrance is very much shaken about it.

Q. Was not the matter a subject of conversation the following morning at breakfast, and may you not have got your impression from something that was said there?

A. The subject was talked over there. We were in the habit of talking over matters at the breakfast table. I remember very distinctly the remarks I made myself. I am confident that at that time I did not know who the man was.

Q. Was it there that you learned who it was?

A. I do not know whether I was told then, or not; I think I learned it that day.

Q. Do you pretend to any accuracy of memory about it?

A. No, only my belief. I believe he was there, and saw Mrs. Wyman. That is all I know about it.

Q. How did you happen to testify that Judge Hubbell remained there from nine till eleven?

A. I was in the habit of going to bed about eleven, and I know he had not gone then.

Q. It was a mere guess then, or calculation upon your habit?

A. Yes, sir. I had not been out of the house all that time.

Q. What would you say if it should appear in proof that he left in five minutes? A. I understand that that will appear in proof.

Q. Did Mr. and Mrs. Atwood board at Seymour's then? A. No, sir.

Q. Do you know of their going up and coming down from Mrs. Wyman's room that evening?

A. I do not know; I did not hear them. I think I was sitting in the parlor when Judge Hubbell came in and went up stairs with Seymour.

Q. Did you hear Seymour go up and come down within five or ten minutes?

A. I have no remembrance of it.

Q. Do you know any thing in your memory which authorizes you to swear that you knew any thing that took place that night?

A. Nothing except that a man called. It is my impression that the hour was from nine till eleven, when he called.

Q. I understood you to say that he staid till eleven?

A. He called, and my impression is that he had not gone away at eleven.

Q. Did you see Mrs. Wyman that evening at all? A. No, sir.

Q. Who was with you in the parlor?

A. Mr. Seymour. My impression is, that he went up stairs, with the gentleman.

Q. A greater portion of the time you were alone in the parlor?

A. I do not remember any one being there; I think there was no one there. I think I was engaged in reading at the time.

Q. Who were at breakfast the next morning?

A. Mr. and Mrs. Seymour, his sister, his children, Dr. Favill, and I think Mr. Burdick was boarding there at the time.

Q. Was Mrs. Wyman at the breakfast table?

A. I do not think she was. She was sick in bed, I understood, at the time.

Q. Had she been sick some days?

A. She came there in a high state of excitement. I saw her when she came.

Q. Did she soon take to her bed?

A. Yes; perhaps the same day, or the next day. I did not see her about the house much.

Q. Did you see her about the house at all up to the time you had that talk at the breakfast table, or had she not, during all that time, been confined to her room?

A. I think she was confined to her room.

Q. You do not know who was in when you supposed Mrs. Wyman was sick, besides Judge Hubbell. A. No, sir.

Q. You do not know then, whether the interview was private, indecent, or otherwise? A. I do not know.

Mr. Ryan. How long after the gentleman came there, that night, did you sit up?

A. My remembrance is, that I sat up quite a while; that I sat up till I was sleepy. I sat up expressly to see who it was.

Q. Do you recollect having your attention called to it by Mr. Seymour?

A. I think I introduced the subject myself at the breakfast table.

Mr. Ryan. No, but that night. Do you recollect that Mr. Seymour called your attention to that visit, on his part, that night. A. Yes, sir.

Q. And you state that you sat up late for the purpose of seeing who the man was?

A. I sat up till I was sleepy. I do not know whether it was late or early.

Q. You have stated that your impression is that you have had such a conversation both with Judge Hubbell and Seymour. They have both denied that, and that has shaken your memory. Will you now try to put out of your mind, utterly, all conversation with them, and tell this Court what is your recollection of having such a conversation with Judge Hubbell?

Witness. And aside from my own farther recollection.

Mr. Ryan. No, sir; but aside from all that has been said to you upon the subject, and testify now your real memory.

A. I have testified without meaning to be biassed by what they said.

Mr. Ryan. That is not the answer.

A. I have stated that I had that belief.—My impression is, and was, that I had such a conversation.

Q. What is your impression or belief shaken by?

A. By the testimony of others, and my own recollection somewhat.

Q. Putting out of your mind now all that has been said to you by Mr. Seymour, Judge Hubbell, or any body else—setting that all aside, can you recollect the conversation as you have stated?

A. Aside from farther light on the subject, I should say I had a conversation with Judge Hubbell.

Q. After that evening when the gentleman called there, whom you supposed to be Judge Hubbell, was your attention called to that interview by any act or conversation on the part of Mrs. Seymour?

A. I have talked with her since that. I think Mrs. Seymour did converse about it the next day.

Mr. Ryan. I did not ask you that.

Witness. Then I did not understand the question.

(Question repeated.)

A. I cannot say that the conversation was called up by any conduct or conversation on her part expressly.

Q. Was your attention called to the peculiarity of that interview by any conduct or conversation on the part of Mrs. Seymour?

Mr. Knowlton. To the *peculiarity*, this question is.

Witness. I do not think it was.

Mr. Arnold. You say you sat up in the parlor on that evening, with a view to see who it was that called. What did you want to see who it was for?

A. Curiosity. Perhaps I might give another answer—we had been in the habit of sparring a great deal at the table, for fun, and this, I thought, might make a good subject.

Q. You had quite a contest, then, between curiosity and your desire to sleep?

A. Yes, sir.

Q. And sleep got the better of you. Did you dream of it. A. I did not.

Q. And the next morning you brought on the "sparring." A. Yes, sir.

Q. That annoyed Seymour, and he wished you to say nothing about it?

A. Yes, sir.

Q. May not your curiosity, which was lively, have kept you up later than eleven, so that you might testify that Judge Hubbell staid till past midnight?

A. I do not think that I should have suffered my curiosity to have discommoded me a great deal.

Q. Were you on the watch? A. I do not know that I was.

Q. Could not that person have come down within five or ten minutes, and you not have known it? A. Possibly he might.

Mr. Knowlton. You stated that from the fact that you saw an individual go up, you judge from your ordinary habits that he did not come down till a certain hour. Do you mean to say that you sat up to see who it was, from an ordinary habit of watching?

A. No, sir, I did not mean to say any such thing.

Mr. KNOWLTON. That is all that I wanted to know. I did not want you placed in a bad position before this Court. Mr. Ryan, do you want any thing more of the witness?

Mr. RYAN. I can't say that I do.

JAMES KNEELAND called, sworn, and examined to specification two of article ten; specifications one and thirteen of article eleven.

Witness. I reside in Milwaukee.

Q. Are you one of the board of directors of the Milwaukee and Mississippi Railroad Company? A. I am.

Q. Do you recollect an action tried in the circuit court of Milwaukee county, of George Trentledge vs. the Milwaukee and Mississippi Railroad Company?

A. I understand there was such a case. I was not present during the trial.

Q. Do you recollect having a conversation with Judge Hubbell in relation to the verdict of the jury in that case?

A. I do recollect of having a conversation with him on that subject.

Q. Will you state when it was?

A. It was at the trial. My impression is it was on the evening of the day of the trial, but it might have been the evening following. It was either the same evening or the next evening.

Q. Will you now state what that conversation was?

A. I do not know that I can state the precise language, but in substance I think I can. I believe I called on Judge Hubbell on some business, and when that was over I think I introduced the subject, and asked him if the Trentledge suit was disposed of. He said it was, and told me what the verdict was. I remarked to him—"that is too much," I think, or something to that effect. I think he assented to my remark, and said an application had been made to him, or was about to be made, for a new trial; or that he had granted a new trial; I do not recollect which.

Q. Did he state whether he should set aside the verdict?

A. I do not remember whether he did or not, my impression is, that he said he had been applied to for a new trial, and that he should grant a new trial; I do not know that that was the language.

Q. Do you recollect of having a conversation with Judge Hubbell in the U. S. Hotel, about the month of August, 1851, in relation to the Milwaukee and Mississippi Railroad company, or any of its doings—or I will make the question a little more definite—in regard to an application for an injunction made, or about to be made, against the railroad company?

A. I have had various conversations with Judge Hubbell in relation to railroad matters—in relation to procuring right of way more particularly.

Q. Do you recollect somewhere about the month of August, 1851, Judge Hubbell remarking to you that your railroad company was in trouble again?

A. I think I do.

Q. Will you state that conversation to the Court?

A. There is one occasion I have in my mind now, where an application was made and commissioners were appointed to appraise damages. They appraised them in one case at four hundred dollars on the right of way, from which the company took an appeal. This was in Waukesha county. I think the man's name was Hyde—though I am not certain as to the name. We went on, let

down his fences, and commenced work. This man felt very much aggrieved about it, and made an application for an injunction, through Mr. Day, as attorney. He was going on to get out an injunction against the company. In this case I saw Judge Hubbell, either at the U. S. Hotel or in the street, and I don't know which. I do not remember who introduced the subject. I think he said an application had been made for an injunction in that case. I remarked to him—"of course you won't grant it without giving the company a hearing." "Well, I don't know," he said, "your company is giving the court a great deal of trouble, and yourselves a great deal of expense. You know I advised you to settle the right of way before commencing operations."—Which in fact he did. He charged me particularly upon that point, saying—"You must secure the right of way before you break ground, or you will have trouble." In this case he remarked—"You had better secure your right of way and settle it."

Q. Did you make any remark about his granting or not granting the injunction?

A. Nothing further than I have said—"of course you won't grant it without giving the company a hearing.

Romanzo B. Rice was called, sworn and examined to article two, specification three.

Q. Did you ever purchse lot one, block sixty five, in Milwaukee.

A. Yes, sir.

Q. Who did you make the bargain with to purchase it.

A. I purchased it from four different persons—Levi Hubbell, Henry P. Hubbell, J. O. Humble and Jane Humble his wife.

Q. Who did you pay the consideration of that purchase to?

A. I gave part of the money to Henry P. Hubbell, and part of it to Levi Hubbell.

Q. How much was the whole consideration you were to pay them?

A. Thirteen hundred and fifty dollars.

Q. How much did you pay to each of them?

A. I could not say without looking at the papers. I have a note here of three hundred and fifty dollars, which I paid to Levi Hubbell. That is a note which I gave in part payment of the thirteenn hundred and fifty dollars, and have paid it.

Q. Whose hand writing is the body of that note in?

A. I think it is Henry P. Hubbell's.

Q. How did you pay the balance of the thirteen hundred and fifty dollars?

A. I gave a certificate of deposite for something over nine hundred dollars and the balance in cash; both to Henry P. Hubbell. I took the deed from Levi Hubbell and Henry P. Hubbell. (Witness here produced the deed.)

Q. Will you state what conversation took place between you and Judge Hubbell and Henry P. Hubbell in regard to a warranty of the title which you were so purchasing?

A. I had several conversations with them, but I cannot state the exact language of any of them. Henry P. Hubbell refused to give me a warrantee, and referred me, I think, to the Judge; and it was agreed upon that he should be a party in the deed and give a warrantee.

Q. Why did Henry P. Hubbell refuse to give a warrantee?

A. I think he stated that he was not entirely interested. The effect, as I un-

derstood it, was, that the Judge's interest was more than his, and he did not wish to give a warrantee.

Q. To whom did you pay this note of three hundred and fifty dollars?

A. I think I paid a hundred and fifteen of it to Judge Hubbell and the balance to Henry P.

Q. Was Henry at that time in the office of Judge Hubbell in Milwaukee?

A. They seemed to have two different offices—one in the front and another in the rear.

Q. Were they the same suit of offices—one opening into the other?

A. I think not; there was a hall running between them. That was in the U. S. Hotel, and the office over Wall's store, was the one occupied by Henry P. Hubbell.

Judge HUBBELL. I thought you understood that I did not deny, that part of that purchase belonged to me.

Q. At the time you purchased that property, who was in possession of it?

A. Joseph O. Humble.

Cross Examination.—Q. Do you recollect that there was a considerable amount of taxes that had to be discharged, over and above the claims that had to be satisfied by the sale? A. I think there was.

Q. Was that one of the objects of taking the covenants in this deed?

A. I did not so understand it.

Q. Who was to relieve the premises from taxes?

A. I understood that Judge Hubbell and Henry, were to give me a perfect title.

Judge HUBBELL. I did afterwards pay the taxes.

A. Yes, sir. We divided on some oldtaxes of 1849 and '50.

Q. You talked about bidding at the chancery sale? A. I did bid.

Q. Did Henry bid over you? A. I do not know that he bid at all.

Q. Who bid it off? A. Mr. Conover, I think.

Q. And afterwards you gave something more than it was bid off for?

A. Some two hundred dollars more, I think.

GEORGE D. DOUSMAN was called, sworn, and examined to article ten, specification thirteen. I reside in Milwaukee. I know Judge Hubbell.

Q. Do you recollect, Mr. Dousman, a suit of the board of Supervisors of Milwaukee county, against Dunbar, yourself, and others? A. Yes, sir.

Q. Do you recollect having a conversation on the subject of that suit with Judge Hubbell? A. Yes, sir.

Q. Will you state when it was?

A. I think it was in May 1851, on the sidewalk near Mr. Mitchell's Bank. I met the Judge and after passing the compliments of the day with him, I spoke to him to bring on a certain suit that I had in Court, that had been standing on the docket for the last six or eight years, and I was very anxious to have it settled. He told me he was ready to try it at any time. This was the suit you have asked about. I told my attorney, Mr. Finch, about it. The suit was tried before the Judge, or commenced, and the Judge was taken sick before the testimony was got through with.

Q. Did you tell him that the attorneys of that county were delaying it?

A. Yes, sir. I told him there was a great deal of delay upon both sides, and that it was a matter I wanted settled. I was security on a bond, and the secu-

rity was in a third person's hands. The lawyers, I said, were dilatory on both sides. The bond had been mislaid or stolen for several years. As I said before, I met Judge Hubbell on the side-walk, and wished him to have that suit brought up and disposed of. He told me certainly, he was ready at any time my lawyers were ready. I then went to Mr. Finch and told him that Judge Hubbell was ready to try that case, and I wanted to have it taken up and disposed of. I mean to be understood, that that was the purport of what the Judge told me. I told him that the security was placed in the hands of Mr. Walker, and as it was quite sickly about that time, he might be taken away, and I might have to meet the debt. I don't know as I told him the attorneys were delaying it; but I knew that that was the case. There was some delay on the part of somebody. I did not want to be kept in hot water, I wanted the matter tried. That was just before the May or June term, 1851. It was in the spring.

Q. Now, will you state in Judge Hubbell's language, what he told you about bringing that suit to trial?

A. If I were to remember distinctly, I should say he said, "certainly, I am willing at any time to hear it." It was a very few words, I know.

Q. Was the cause brought to trial at that term which ensued immediately?

A. Well, that I do not know. It was tried at the term when the Judge was taken sick, if you know when that was. It was during the year of '51, either spring or fall, I don't remember which.

Q. You do not know whether it was the next succeeding term or not?

A. No, sir! I do not, as I did not attend Court at all.

Cross Examination.—Q. Was your object, Mr. Dousman, in this interview, to ascertain when your case would be tried, in order to drive it on as far as possible, or was it to influence the Judge to forward it?

A. No, sir, far from it. I did not want to pay some eighteen hundred or two thousand dollars if I could help it. It was a purely casual remark of mine to hurry it on; I did not say anything, and did not have the least idea about influencing him how to decide the suit. That was no object of mine. My object was to have it tried, so as to have it paid, if I had to pay it, out of the indemnifying funds in the hands of Mr. Walker. It was on the strength of that that I told Mr. Finch that the Judge was ready to try it with a view to punch him up. The case was given to the jury—and they never brought in a verdict; it went by the board. I claimed it should come on, on this ground —that it was the oldest suit on the docket, and that it should not be put over from term to term as it had been.

Q. Now, how many times have you been called out here to testify to this matter?

A. Three times—to testify to all this nonsense; and it has cost me one hundred dollars. I have been subpœnaed twice, and attached once, besides being telegraphed to.

Q. Mr. Ryan The attachment was issued against you because you did not come. Was it not? A. I suppose so.

Q. You went home after coming here for your own accommodation?

A. I asked leave of absence to go home. I have testified once before the committee, and once before the Court.

Q. Mr. Arnold. You were in attendance here all last week, were you not?

A. Yes, sir, from Sunday until Friday at 3 o'clock.

Geo. B. Smith recalled.

I know Mr. Thompson.

Q. Do you recollect Mr. Thompson asking you to assent to Haney's being fined and not imprisoned?

Mr. Arnold. Mr. Thompson was your witness and not ours. Do you seek to discredit his testimony?

Mr. Ryan. Not at all. We seek to get his answer upon a matter in regard to which you interrogated Thompson, and we did not. I propose to prove by Mr. Smith's positive recollection what was said.

Mr. Knowlton. The object then is to contradict or else discredit.

Mr. Ryan. No, sir, neither one nor the other.

Mr. Arnold. It don't occur to me that it is exactly good evidence; but we will see what you are going to ask.

Q. Do you recollect Mr. Thompson's applying to you for consent to fine Haney, and not imprison him?

A. I do. Mr. Thompson came to me in company with Beriah Brown. I met them at the foot of the stairs of our office. The first question he asked me was, do you want Haney sentenced to go to the penitentiary. I said no, Mr. Thompson. I had heard that he wished him fined instead of being imprisoned. I said I did not want any body to go to the penitentiary. Well, said he, if you will go, in open court, and say to the Judge that it is right to fine Haney instead of imprisoning him, it will be done. That it is all the trouble in the way. I said, Mr. Thompson, I cannot do it, and I shan't do it. I have done my duty and Judge Hubbell must do his. Well, said he, won't you interfere with it—won't you object to it in Court. I said, no, I will not, one way or the other. I said, I had examined the law and was fully satisfied that Judge Hubbell had not the power, and that I had told him so myself. This was the only conversation that Mr. Thompson ever addressed to me, either pro or con, and I never gave him to understand any thing else in the premises. I made a further remark to Mr. Thompson, by which he ought to recollect what I did say; but perhaps it is unnecessary to state it here. It was a matter of opinion which I expressed to him, I told him what I thought would be the consequences.

Mr. Ryan. I will go on with the examination of Mr. Smith, upon another specification. (Article 7, specification 9.)

Q. Were you the commissioner who took the testimony in the Wyman divorce case? A. I was.

Q. Did you know the parties to that suit?

A. I did. They both resided in this town. Mr. Wyman still resides here, and Mrs. Wyman remained here sometime after the petition was filed, but I cannot say how long after. She remained here till after the divorce was granted, I know.

Mr. Arnold. What is the object of this last testimony. I do not know whether I wish to cross examine the witness or not.

Mr. Ryan. It is as to a circumstance which goes to show collusion; at the eighth section of the statute on divorce.

Mr. Arnold. Was that Statute in force at that time.

Mr. Ryan. I cannot answer that now. The bill was filed in 1849.

Judge Hubbell. The law in relation to divorce, took effect on the first of nuary, 1850. There is no use disputing about it.

Cross Examination.—Q. Do you recollect having any conversation with Mr. Thompson at the time Haney was sentenced.

A. I would not be sure whether Thompson was there or not. I did have a conversation in the Court Room previous to the sentence, with Haney's counsel. I recollect the conversation in the window. I did not leave then to go up to the Judge. I came to them from the Judge, and told them what the Judge had told me. I told them that Judge Hubbell had just informed me that he had made up his mind to fine Haney, and he could take his choice between a fine, a sentence to the penitentiary, or he could take a writ of error. The Judge did not tell me how much he should fine him.

Q. In any interview upon the sentence, or upon that verdict with Mr. Collins or Mr. Thompson or Mr. Botkin, can you state that you promised you would speak with Judge Hubbell about having Haney fined, and can you state that you left them for that purpose.

A. No, sir. I never spoke to any one in that way.

Q. Mr. Thompson said that he really touched your sympathies. How was that?

A. Well, my sympathies were touched in behalf of Haney from the time of the assault. I hardly thought during the trial of the case, that Haney would be convicted of the crime with which he was charged; but that he would be, and ought to be for simple assault. My sympathies almost always have been with the accused after conviction; but I have endeavored never to let my sympathies interfere with the proper discharge of my duty, and I do not think I did in that case. I know I never said I would converse with Judge Hubbell upon the subject of fining Haney, because I know I never intended to do any such thing.

Q. Can you state whether Judge Hubbell imposed that fine out of sympathy for the accused, or did he justify himself by the law?

A. I stated in the outset what was true, that Judge Hubbell and I examined the law together; I said I did not see how he could fine him, and he said he did not see how he could either.

Q. Had you the indictment before you, when that consultation took place?

A. I do not remember whether it was at his room or not. We had what was equivalent to it. The indictment was a literal copy of Archibold's Criminal pleadings which were on his table. Mr. Haney was about town one or two days after the argument of the case. I mean the argument on the motion of arrest. I know the sentence was not passed immediately on the argument of the objection to the indictment, and the motion for a new trial. He may have been sentenced immediately on the decision of the Court; but the argument took place a day or two before. Mr. Haney was sentenced the last day, I think, of the term of the Court. I noted in my memorandum book at the time that the objections were argued and over ruled by the Judge; but the record differs from that.

I stated, Mr. Ryan, that I was commissioner in that case between Mr. and Mrs. Wyman. My name is not signed to the petition for divorce in that case. Mr. Collins and myself were partners. By an arrangement, I did take the testimony; it was by agreement and arrangement between Mr. Collins as counsel for the complainant, and Abbott and Catlin for Mr. Wyman.

Mr. Ryan. (Handing Mr. Smith a paper.) In whose hand writing are the decree and order to take proofs here?

A. Both are in Judge Hubbell's hand writing.

Q. When did proceedings commence in that divorce suit?

A. I do not know, and I do not think any one of the counsel could tell when it begun, when it progressed or when it ended. No one could tell when the petition was filed and I make the remark for that reason. I did not know where it was filed when I took the petition. I swore that it was in this county, and supposed it was so till afterwards.

Judge HUBBELL. Do you recollect in regard to cases you have tried, any thing in regard to conversation that has passed?

A. I pretend to know generally what county I bring and try a case in.

Judge HUBBELL. Is it not almost impossible to recollect facts that occur in judicial proceedings?

A. Yes, sir! unless they are startling or peculiar. Mr. Abbott thought the proceeding commenced in Jefferson county.

Mr. KNOWLTON. The amount of it was, that all of you did not know much about it.

A. I don't think we did.

Mr. KNOWLTON. Well, that is good sharp practice.

Mr. ARNOLD. Under the old Territorial Statutes could not you bring a suit anywhere?

A. Well, you know, Mr. Arnold, as well as I do about that. I had thought till Judge Hubbell's remark, that the present statute on the subject of divorce was in force in 1849.

AFTERNOON SESSION.

Mr. SANDERS. The Managers, on the part of the Assembly, have spared no effort to compel the attendance of witnesses, so as to bring this trial to as speedy a termination as possible; and, inasmuch, as we do not like to ask for any delay on account of the non-attendance of wttnesses, we have come to the conclusion to say to this Court. that with certain reservations and exceptions, we will at this time close the testimony on the part of the prosecution. On article six, specification one, we wish to reserve the right to receive evidence against the Wisconsin Marine and Fire Insurance Company. This is record evidence, and its introduction will not prejudice or compromise the rights of the respondent. We wish also to reserve the right to introduce the record of the indictment and transcript in the Hungerford case, in the United States District Court at Milwaukee. It has been sent for, but has not arrived here yet. It probably will be here this evening. We wish to reserve the right to read that in evidence. And then there is a witness who has been out of the State. I think he left before the filing of Articles of Impeachment. We have been advised and believe that he intended to return to this State somewhere between the twentieth or the twenty-fifth of this month. For aught we know he may be in this State now; but we wish by that witness to prove a retainer on the part of the respondent in the Hungerford case, in the United States Court. We ask this, so that the respondent may know our intention, and so that the Court may understand it. We do not wish delay to call that witness; but we wish to reserve the right to introduce him when he comes. In regard to specifications five, six and seven, of article ten, Mr. Pratt has been subpœnaed and attached. That has been returned unsatisfied, but we do not deem it of sufficient importance to

ask for delay. With this statement on the part of the Managers, and making these reservations, we now rest the prosecution.

Mr. KNOWLTON. We did not anticipate that the prosecution were to close at this time, and we are not prepared to go on with the defence, but will be on Monday next. I make this statement for the purpose of having the Court take such action as they may think best.

Whereupon the Court adjourned until Monday morning, at nine o'clock.

EIGHTEENTH DAY.

MONDAY, June 27.

MORNING SESSION.

Mr. SANDERS moved for a writ of attachment to compel the attendance of Lafayette Towsley.

Senator STEWART. I would state that Senator Vittum is absent. He went home on Saturday and has not returned. I move that we proceed without his attendance, as he will probably be here in the course of the forenoon.

Mr. KNOWLTON. I can now announce to the court that we are prepared to go on so far as submitting the remarks of my associate is concerned; but we shall of course desire all members of the court present when we offer testimony.

OPENING ARGUMENT OF MR. ARNOLD.

Mr. President, the impeachment of the Honorable the Assembly, and of the people of this state against the respondent at the bar, in behalf of the prosecution is already before you. However of itself and unexplained it may affect his character or his fate I do not now propose to inquire. All argument upon the facts of the case until the whole proofs shall be submitted would be necessarily imperfect if not futile. But I am instructed by the respondent, and I now propose before introducing his proofs, to submit to the court a few preliminary observations.

It has been said by the learned counsel for the Managers, that this proceeding is a solemn one; and theoretically I concur in the truth of this remark. It is indeed a solemn thing, when the sovereign state calls upon one of its public officers to respond to criminal accusation against his conduct. It is indeed a solemn thing, when the sovereign state calls upon one of its public officers to respond to a criminal accusation against his conduct. It is solemn, not only on account of the character of his accusors, but on account of the consequences that may impend over himself.

But, sir, when I survey this whole case with the eye of cool observation—when I measure its heigth and depth, its length and breadth—when I reflect upon the motives of its inception, the spirit of its prosecution and the proofs that are before you—although it may be a solemn matter to the state, from the time, the perseverance, and the malevolence devoted to it, and important to the respondent as its chosen victim. I feel constrained to believe that it is *now* in the judgment of the law what it soon will be in the judgment of the world—an *imposing mockery*.

The power of impeachment is indeed a tremendous one, and may not inaptly

be compared to Goliah's sword, kept in the temple, never to be used but on great occasions.

It is indeed no trivial cause that will justify the state to arrest one of its officers, endowed for a period with the administration of a portion of the sovereignty, in the exercise of his functions, and to arraign him before you as a culprit. And if you will recur to the history of our father-land from which we have derived this proceeding, you will find but too many most solemn illustrations of the truth of these remarks.

You will find in but too many instances in its mad spirit that it has confounded the innocent with the guilty—you will find in but too many instances that it has sacrificed illustrious victims to the spirit of relentless persecution—you will find in but too many instances that it has poured out the blood of patriots as an atonement to the demon spirit of party—you will find but too many instances of oppression, of cruelty, and of foul injustice that would extort from any mind the concession that it is indeed a tremendous power. And even in our own land, where the safeguards of law are so well thrown around, not only the private citizen, but the public officer, it is still a fearful power. It speaks in the name and with the potential voice of the people. It commands all the resources, energies and treasure of the government. It enlists all the genius and talent and eloquence of counsel quickened, it may be, by a sense of malevolence, and inspired, it may be with the love of fame. It may throw around the respondent a net-work of circumstances, and of proof that almost baffle explanation. It may kindle around his devoted head a blaze of prejudice and of passion, which may for the moment swerve reason from its throne and enfeeble the power of truth; and the victim alone and helpless, may, day after day, be the object of ridicule, of contempt and of scorn, and he must seal his lips in reverential silence, and if perchance he sheds a tear over the mistakes, the falsehoods or the malice of his accusers, the foul accusation follows him through the streets, that that tear which anguish has wrung from his eye is but the tear of dissimilation or of confessed guilt.

But I tell you that though you may torture the victim, he is not yet wholly within your power. Neither his life, nor his reputation are within your grasp. Thank God his accusors are not his judges; but to this body—to this Court—cool, deliberate and independent—to this Court, made up of the intelligence, and the wisdom, and the independence of the State, he now appeals with unshaken confidence, and with manly courage to hurl back the accusations of the prosecution, and to vindicate his innocence before the world.

Mr. President, we find the term Impeachment used in our constitution, and we find it used in the constitution of the United States, and probably in that of every State in the Union. Yet we find it essentially without a definition, and we must travel back further than the constitutions of any of our States, or of the United States, to arrive at its definition. We have derived it in this country from England, and to get at its import we travel far back into the early ages of the common law. Upon this subject I read a single paragraph from Rawle, on the constitution, page 210: "Impeachments are thus introduced," speaking of the article on the subject in the constitution of the United States, "as a known definite term, and we must have recourse to the *common law of England*, for the definition of them."

Also from Story's Commentaries on the Constitution, vol. 2, page 115:

"The practice of impeachments seem to have been originally derived into the common law from the Germans, who in their great councils, sometimes tried capital accusations relating to the public. *Licet apud concilium accusare, quoque et discrimen capitis intrudere.* When it was adopted in England, it received material improvements.—In Germany, and also in the Grecian and Roman republics, the people were, at the same time, the accusers and judges; thus trampling down at the outset, the best safeguards of the rights and lives of the citizens.

"But in England, the house of commons is invested with the sole power of impeachment, and the house of lords with the sole power of trial. Thus a tribunal of high dignity, independence and intelligence, and not likely to be unduly swayed by the influence of popular opinion, is established to protect the accused, and secure to him a favorable hearing.

"The great objects to be attained in the selection of a tribunal for the trial of impeachments are, impartiality, integrity, intelligence, and independence; if either of these is wanting, the trial must be radically imperfect. To ensure impartiality, the body must be in some degree removed from popular power and passions, from the influence of sectional prejudice, and from the more dangerous influence of mere party spirit. To secure integrity, there must be a lofty sense of duty, and a keep responsibility to future times as well as to God. To secure intelligence, there must be age, experience, and high intellectual powers, as well as attainments. To secure independence, there must be numbers as well as talents, and a confidence resulting at once from permanency of place, and dignity of station, and enlightened patriotism."

"The jurisdiction is to be exercised over offences, which are committed by public men in violation of their public trust and duties. Those duties are, in many cases, political; and, indeed, in other cases to which the power of impeachment will probably be applied. They will respect functionaries of a high character, where the remedy would otherwise be wholly inadequate, and the grievance be incapable of redress. Strictly speaking, then, the power partakes of a political character, as it respects injuries to the society in its political character; and, on this account, it requires to be guarded in its exercise against the spirit of faction, the intolerance of party, and the sudden movements of the popular feeling.

"The prosecution will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or hostile to the accused. The press, with its unsparing vigilance, will arrange itself on either side, to control, and influence public opinion; and there will always be some danger, that the decision will be regulated more by the comparative strength of parties, than by the real proofs of innocence or guilt."

In this connection, Mr. President, permit me also to call the attention of the Court to one or two of the incidents of the exercise of the power of impeachment.

In the first place it is worthy of observation, that the proper party to prosecute and impeach is the Assembly. On the subject, I refer to the plain provision of our own constitution, and I also refer to Story:

"On the day appointed for the trial, the House of Representatives appear at the bar of the Senate, either in a body, or by the Managers selected for that purpose, to proceed with the trial."

On the same subject, I refer to Woddessun, without pausing here to read. No instance, I believe, can be found in the history of impeachments where the House of Representatives, or the prosecuting body, by whatever name it may be denominated, has appeared by counsel. I have never met with any such instance, although it may be possible that one may exist. At any rate, it is not the rule, and if there is such a case it is an exception.

In this connection, I must be permitted to allude to the facts existing in the present case. Upon the complaint to the Assembly against the Judge of the second judicial circuit, a resolution was adopted by the assembly, referring the charges against him to a committee—a committee of able and respectable gentlemen—for the purpose of ascertaining the truth of the charges preferred, and whether the accused ought or ought not to be impeached. Yet I believe it to be a fact, and I refer to it as showing something, not only of the actual history, but of the real motives of the prosecution, that no sooner was that committee organized, no sooner had it entered upon its labors, than we find that the whole matter is carried on by counsel, who, by some means, have been employed for that specific purpose; and from that time forth, until the present moment, that counsel has been the life, soul, and body of the prosecution. Every thing seems to have been the work of his brain or his hand. And when the day fixed for the trial in the senate had arrived, I knew not for what reason, except that the Honorable Managers had paid but little attention to the case—and, for aught I know, cared less about it—they were not ready to proceed with the trial, and delay after delay occurred at their instance, and they were finally ready only when they were enabled to obtain the services of their counsel. And the Hon. the Assembly which at its last session by an almost unanimous vote, I believe, and in accordance with parliamentary usage, refused to allow extraneous counsel to be employed, yet now, upon the application of the Hon. Managers, and to serve their necessities to help them out of a dilemma, they recanted their course, and by an equally unanimous vote accorded to the Managers their request.

I will not pay the learned Managers so poor a compliment, or rather cast on them so much of censure, as to say that they were not fully competent, as men and as lawyers, to conduct the prosecution to the entire satisfaction of the Assembly and of the public. I only look upon this fact as a significant one, in connection with the motives of the prosecution and of the parties who instigated it, as an evidence for what it may be worth, that this prosecution has not been the result of any serious call of public justice which directed the course of the Assembly, but that it has proceeded from personal motives, and from parties who had a selfish object to accomplish—from motives which were unworthy to actuate the Assembly, and which I hope may never reach this Court.

Again, another point incident to trial by impeachment, to which I would call your attention, is the number of your body which must concur in a judgment of guilty. This, by a provision of the constitution, requires two-thirds of the members present.

This is a protection thrown around the citizen.—Story's Commentaries, vol. ii. page 247—

It is added, "And no person shall be convicted, without the concurrence of two-thirds of the members present." Although very numerous objections were

taken to the constitution, none seems to have presented itself against this particular quorum required for a conviction; and yet it might have been fairly thought to be open to attack on various sides from its supposed theoretical inconvenience and incongruity. It might have been said with some plausibility, that it deserted the general principles even of courts of justice, where a mere majority make the decision, and of all legislative bodies where a similar rule is adopted; and, that the requisition of two-thirds would reduce the power of impeachment to a mere nullity. Besides, upon the trial of impeachments in the house of lords, the conviction or acquittal is by a mere majority; so that there is a failure of any analogy to support the precedent."

It does not appear from any authentic memorials, what were the precise grounds upon which this limitation was interposed. But it may well be conjectured, that the real grounds were, to secure an impartial trial, and to guard public men from being sacrificed to the immediate impulses of popular resentment or party predominance. In England, the house of lords, from its very structure and hereditary independence, furnishes a sufficient barrier against such oppression and injustice. Mr. Justice Blackstone has remarked, with manifest satisfaction, that the nobility "have neither the same interest, nor the same passions as popular assemblies:" and, that "it is proper that the nobility should judge, to insure justice to the accused, as it is proper that the people should accuse, to insure justice to the commonwealth." Our Senate is, from the very theory of the constitution, founded upon a more popular basis; and it was desirable to prevent any corruption of a mere majority of the State, to displace or to destroy a meritorious public officer. If a mere majority were sufficient to convict, there would be danger in times of high popular commotion, or party spirit, that the influence of the House of Representatives would be found irresistible. The only practical le check seemed to be, the introduction of the clause of two-thirds, which would thus require an union of opinion and interest rare, except in cases where guilt was manifest, and innocence scarcely presumable. Nor could the limitation be justly complained of; for in common cases, the law not only presumes every man innocent until he is proved guilty, but unanimity in the verdict of the jury is indispensible. Here, an intermediate scale is adopted, between unanimity and a mere majority. And if the guilt of a public officer cannot be established, to the satisfaction of two-thirds of a body of high talents and acquirements, which sympathizes with the people, and represents the state, after a full investigation of the facts, it must be, that the evidence is too infirm and too loose to justify conviction. Under such circumstances, it would be far more consonant to the notions of justice in a republic, that a guilty person should escape, than that an innocent person should become the victim of injustice from popular odium, or party combinations."

Mr. President, I next proceed to inquire, in the order which I have marked out for myself, what officers, under the constitution, are impeachable. In England, all the subjects of the realm, whether peers or commoners, are impeachable. Under our government, both the general government and the government of the several states. There is a limitation, varied, perhaps, in the different states, but in ours limited to civil officers, and in the constitution of the United States, limited to civil officers, with the addition of the President and Vice President; who are not, I believe, in the technical acceptation of the term, regarded as civil officers of the government. I read from Wooddessun's Lectures on the Laws of England, vol. ii. p. 358:

"All the king's subjects are impeachable in parliament, but with this distinction, that a peer may be accused before his peers of any crime—a commoner (though, perhaps, it was formerly otherwise) can now be charged with misdemeanors only, not with any capital offence. For when Fitzharris, in the year 1681, was impeached of high treason, the lords remitted the prosecution to the inferior court, though it greatly exasperated the accusers. Such kinds of misdeeds, however, as peculiarly injure the commonwealth, by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws, or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So, where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safe-guard of the sea, an ambassador to betray his trust, a privy counsellor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants, or incompatible employment. These imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offences, or to investigate and reform the general polity of the state."

Also, Story's Commentaries, vol. ii. page 255.

The fourth section of the second article is as follows: "The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

From this clause it appears, that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice President. In this respect, it differs materially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in parliament; though it is asserted that commoners cannot now be impeached for capital offences, but for misdemeanors only. Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution in parliament.

There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office. In such a government all the citizens are equal, and ought to have the same security of a trial by jury for all crimes and offences laid to their charge, when not holding an official character. To subject them to impeachment, would not only be extremely oppressive and expensive, but would endanger their lives and liberties, by exposing them against their will to persecutions for their conduct in exercising their political rights and privileges. Dear as the trial by jury justly is in civil cases, its value, as a protection against the resentment and violence of rulers and factions in criminal prosecutions, makes it inestimable. It is there and then only, that a citizen, in the sympathy, the impartiality, the intelligence, and incorruptible integrity of his fellows impanelled to try the accusation, may indulge a well-founded confidence to sustain and clear him. If he should choose to accept office, he would voluntarily incur all the additional responsibility growing out of it.

If impeached for his conduct while in office, he should, he could not justly complain since he was placed in that predicament by his own choice; and in accepting office, he submitted to all the consequences. Indeed the moment it was decided that the judgment upon impeachments should be limited to removal and disqualification from office, it followed as a natural result, that it ought not to reach any but officers of the United States.

It seems to have been the original object of the friends of the national government to confine it to these limits; for in the original resolutions proposed to the convention, and in all the subsequent proceedings, the power was expressly limited to national officers.

"Who are 'civil officers' within the meaning of this constitutional provision is an inquiry, which naturally presents itself; and the answer cannot, perhaps, be deemed settled by any solemn adjudication. The term, civil, has various significations. It is sometimes used in contradistinction to *barbarous*, or *savage*, to indicate a state of society reduced to order and regular government. Thus we speak of civil life, civil society, civil government, and civil liberty, in which it is nearly equivalent in meaning to *political*. It is sometimes used in contradistinction to *criminal*, to indicate the private rights and remedies of men, as members of community, in contrast to those which are public and relate to the government. Thus we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction. It is sometimes used in contradistinction to *military*, or *ecclesiastical*, to *natural*, or *foreign*. Thus we speak of a civil station as opposed to a military, or ecclesiastical station; a civil death as opposed to a natural death; a civil war as opposed to a foreign war.

The sense in which the term is used in the constitution, seems to be in contradistinction to *military*, to indicate the rights and duties relating to citizens generally, in contradistinction to those of persons engaged in the land or naval service of the government. It is in this sense, that Blackstone speaks of the laity in England, as divided into three distinct states; the civil, the military and the maratime; the two latter embracing the land and naval forces of the government. And in the same sense the expenses of the civil list of officers are spoken of, in contradistinction to those of the army and navy."

"All officers of the United States, therefore, who hold their appointments under the national government, whether their duties are executive, or judicial, in the highest or in the lowest departments of the government, with the exception of officers in the army and navy, are properly civil officers, within the meaning of the constitution, and liable to impeachment."

These remarks apply equally as well to our own constitution.

The next subject of inquiry to which I wish to call the attention of the Court, is, *for what offences* civil officers are impeachable. In England the scope of impeachment seems to be unlimited. "In general," says Wooddeson, "such kind of misdeeds, however, peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual grounds for this kind of prosecution."

But the subject matter of impeachment in our country, not only under the Constitution of the United States, but of all the States so far as I know, is more limited; differing however in different States. Our own Constitution upon that subject, is different from the Constitution of the United States. The per-

tinent inquiry here is, what under the Constitution of the State of Wisconsin is proper subject matter of impeachment?

I have just read the provision of the Constitution upon that subject. "All civil officers may be impeached for corrupt conduct in office, and for crimes and misdemeanors." The distinction between that provision of our own Constitution, which I have just read, and the provision of the Constitution of the United States, is *marked*.

I will read the provision in the Constitution of the U. S., section 4, article 2. —"The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

As to what constitutes high crimes and misdemeanors, there is no law of the United States that I am aware of, defining the scope or import of these terms; nor am I aware of any law in the State of Wisconsin, which assumes to define what is meant by "crimes and misdemeanors," nor unfortunately have we any definition of them or any rules upon the subject prescribed by any Court of impeachment, either under the Constitution of the United States or any of the States. In any case of impeachment that has ever been tried, I am not aware that the Court has assumed to put any construction, definition or limitation upon the terms "high crimes and misdemeanors;" nor am I aware that any impeachment under any State Constitution; any construction in the opinion of the Court has been given in this matter.

The judgment of the Court has been generally by silent vote, and without any such explanation of it as is given by an ordinary Court or tribunal in the announcement of any decision. We are left therefor to gather from the various impeachments that have been had, from the charges made, and from the results which have been arrived at; and also from the speculation of distinguished lawyers who have been concerned in the trial of them, we are to extract from all these, and from these only, so far as I know what is the meaning of those terms and what species of acts they embrace. On this subject there has been a good deal of speculation by commentators and by lawyers on trials of impeachment. In regard to the subject generally, I shall read to the Court from Story's commentators, page 262.—"The next inquiry is, what are impeachable offences? They are 'treason, bribery, or other high crimes and misdemeanors.'"

The general reasoning here, although our Constitutions differ in language, may be applicable—may be in point—to arrive at what is meant by high crimes and misdemeanors, and what species of acts may be charged and the defendant may be convicted of.

For the definition of treason, resort may be had to the Constitution itself; but for the definition of bribery, resort is naturally and necessarily had to the common law; for that, as the common basis of our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offence. The only practical question is, what are to be deemed high crimes and misdemeanors? Now, neither the Constitution, nor any statute of the United States has in any manner defined any crimes, except treason and bribery, to be high crimes and misdemeanors, and as such impeachable. In what manner, then, are they to be ascertained? Is the silence of the statute book to be deemed conclusive in favor of the party, until Congress have made a legislative declaration and enumeration of the offences, which shall be deemed high crimes and misdemeanors? If so,

then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity! and the party is wholly dispunishable, however enormous may be his corruption or criminality. It will not be sufficient to say, that in the cases, where any offence is punished by any statute of the United States, it may and ought to be, deemed an impeachable offence. It is not every offence, that by the constitution is so impeachable. It must not only be an offence, but a *high* crime and misdemeanor. Besides; there are many most flagrant offences, which, by the statutes of the United States, are punishable only when committed in special places, and within peculiar jurisdictions, as, for instance, on the high seas, or in forts, navy-yards, and arsenals ceded to the United States. Suppose the offence is committed in some other, than these privileged places, or under circumstances not reached by any statute of the United States would it be impeachable?"

"Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute books. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings in 1788 "Resort, then, must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a disposition of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law belonging to, and applicable to the nation in ordinary cases, no one has, as yet, been bold enough to assert that the power of impeachment is limited to offences positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors.

"The doctrine, indeed, would be truly alarming, that the common law did not regulate, interpret, and control the powers and duties of the Court of Impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state originally composing the Union, would be entitled to the common law as his birthright, and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would subjected to no law, to no principle, to no rules of evidence. It is the boast be of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail. For impeachments are not framed to alter the law; but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful de-

frequents, or not easily discerned in the ordinary course of jurisdiction by reason of the peculiar quality of the alleged crimes. Those, who believe that the common law, so far as it is applicable, constitutes a part of the law of the United States in their sovereign character as a nation, not as a source of jurisdiction, but as a guide, and check, and expositor in the administration of the rights, duties, and jurisdiction conferred by the constitution and laws, will find no difficulty in affirming the same doctrines to be applicable to the Senate, as a Court of Impeachment. Those who denounce the common law, as having any application or existence in regard to the national government, must be necessarily driven to maintain, that the power of impeachment is, until Congress shall legislate, a mere nullity, or that it is despotic, both in its reach, and its proceedings. It is remarkable that the first Congress, assembled in 1774, in their famous declaration of the rights of the colonies, asserted, 'that the respective colonies are entitled to the common law of England;' and 'that they are entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have, by experience, respectively found to be applicable to their several local and other circumstances.' It would be singular enough, if, in framing a national government, that common law, so justly dear to the colonies, as their guide and protection, should cease to have any existence, as applicable to the powers, rights, and privileges of the people, or the obligations, and duties and powers of the departments of the national government. If the common law has no existence, as to the Union, as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the government, and its functionaries, in all its departments.

"Congress have unhesitatingly adopted the conclusion, that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding, and the rules of evidence, as well as the principles of decision have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the new case of impeachment, which have heretofore been tried, no one of the charges has rested upon any statutable misdemeanors. It seems, then, to be the settled doctrine of the High Court of Impeachment, that though the common law cannot be a foundation of a jurisdiction, not given by the constitution, or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that, what are, and what are not high crimes and misdemeanors, is to be ascertained by a recurrence to that great basis of American jurisprudence."

I have, thus far, read from the commentaries of Judge Story. I now refer the Court to the commentaries, perhaps of less, perhaps of equal authority, in the celebrated case of Judge Peck. I refer to the report of that trial, page 290. I read from the argument of the Hon. Ambrose Spencer, one of the Managers in that prosecution, a very distinguished Judge; whose commentaries are entitled, perhaps, to as much respect as those of Judge Story. He says:

"It is necessary to right understanding of the impeachment, to ascertain and define what offences constitute judicial misdemeanors. A judicial misdemeanor consists in my opinion, in doing an illegal act, *colo re officii* with bad motives, or in doing an act within the competency of the Court or Judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives. To illustrate the last proposition: the 8th article of the amendments of the constitution forbids the requirement of excessive bail, the impo-

sition of excessive fines, or the infliction of cruel or unusual punishments. If a Judge should disregard these provisions, and from bad motives, violate them, his offence would consist, not in the want of power, but in the manner of his executing an authority intrusted to him, and for exceeding a just and lawful discretion."

He then says, "I shall insist, 1st, That Judge Peck under the facts and circumstances of the case, had no jurisdiction to punish Mr. Lawless by imprisonment.

2nd. If he had jurisdiction, I shall deny that Mr. Lawless had committed any offence whatever, that he had a perfect and indisputable right to publish the article, "A citizen."

3rd. I admit that Judge Peck had the power, in a case proper for its exercise, to suspend Mr. Lawless, or even to strike him from the rolls as an attorney and counsellor of his court. I shall insist that no offence having been committed, his suspension was an arbitrary and wanton act of judicial oppression. I shall insist, those admitting both the power, and that an offence was committed by Mr. Lawless, that the punishment was so unfit and disproportioned to the offence, as to furnish the *cleanest proof* of a wicked and bad motive, amounting to a misdemeanor in office."

I refer to the same book, page 427, I now read from the argument of the Hon. James Buchanan, one of the Managers of said case.

"What is an impeachable offence? This is a preliminary question, which demands attention. It must be decided before the Court can rightly understand what it is they have to try. The constitution of the United States declares the term of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this, we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the constitution, or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments, on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offence impeachable it must be indictable. But this violation of law may consist in the abuse, as well as in the usurpation of authority. The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the Judge without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars, and commits him to prison for one year. Now, although a Judge may possess the power to fine and imprison, for this offence at his discretion, would not this punishment be such an abuse of judicial discretion, and afford such evidence of the tyrannical and arbitrary exercise of power, as would justify the House of Representatives in voting an impeachment? But why need I fancy causes? Can fancy imagine a stronger case than is now, in point of fact before us? A member of the bar is brought before a Court of the United States, guilty, if you please, of having published a libel on the Judge, a libel, however, perfectly decorous in its terms, and imputing no crim-

inal intention, and so difficult of construction, that though the counsel of the respondent have labored for hours to prove it to be a libel, still that question remains doubtful. If in this case, the Judge has degraded the author by imprisonment, and deprived him of his means of earning bread for himself and his family, by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive abuse of authority even admitting the power to punish, in such a case, to be possessed by the Judge? A gross abuse of granted power, and an usurpation of power not granted, are offences equally worthy of, and liable to impeachment. If therefore the gentleman could establish, on the firmest foundation, that the power to punish libels as contempts, may be legally exercised by all Courts of the United States. Still he would not have proceeded far towards the acquittal of his client."

"I make these remarks, not because I entertain the smallest doubt of being able to establish that the respondent has been guilty of a total usurpation of power, in open defiance of the Constitution and law of the land; but merely to express what I believe to be the true law of impeachment."

So much for the commentaries of distinguished authors upon the construction of the terms "high crimes and misdemeanors."

As I said before, we have no statute definition, and no explanation in the opinions of the Court in cases of trial by impeachment. We are left only an inference of what the construction is from the commentaries of others; from the nature of the charges preferred, and from the judgment of the Court.

Now as to the meaning of another term used in our Constitution as to what embraces impeacheable matter: I mean "corrupt conduct in office." I am not aware that we have any definition in our statutes or in common law, or in the works of writers and commentators on this term. I do not know for I have not examined whether that term is used in the Constutions of the other States of the Union.

It is however not a legal term; it is not known to the statute; it is not known to the common law. It is a moral term, and we must arrive at what was intended by it in the best way we can. It is possible it was a phrase introduced into the Constitution, on account of the uncertain construction of the terms "crimes and misdemeanors," and was designed to include such official misconduct as was obviously not indictable.

It may have been used designedly by the framers of the Constitution, to remove any doubt as to what was impeachable under the terms crimes and misdemeanors, to settle the question whether it embraced any thing that was not indictable. Whether this general phraseology was not used to embrace any official misconduct, which could not be punishable by statute.

It certainly does not include errors of judgment, mistakes, nor indiscretions, nor imprudences, for those are not corrupt, they are not contaminated with any moral taint. To establish corrupt conduct in office, there must be a wrongful act done with a bad motive or with a guilty intention; in other words, to establish corrupt conduct in office, it must not only appear that some wrongful or illegal act has been done in office, but that it was done corruptly; or in other words knowing that it was wrongful or illegal. The question is not so much as to the act as to the motive or intent with which it was done. The burden of proof on an impeachment in such a case, is on the prosecution; not only to show clearly the act charged, but also satisfactorily beyond a reasonable

doubt, the corrupt intent. These are the positions which I assume and conscientiously urge upon the consideration of this Court. That before the respondent can be convicted on an impeachment for corrupt conduct in office, it must be made out clearly by the prosecution that some wrongful or illegal act has been done by him, and they must make it out further to the satisfaction of the Court, beyond a reasonable doubt, that he has done an act intentionally and corruptly knowing it to be wrongful or illegal.

And now to the argument on this subject. I say now, as I had occasion to say a few days ago, that perhaps the whole legal defence of the respondent may rest upon this position; and the issue was fairly made up between the learned counsel for the Managers and myself, upon that subject.

The position assumed by him and which I presume he will urge upon this Court, is that it is sufficient for the prosecution to prove the wrongful or illegal act, and that the guilty intention is the natural legal inference; because in the theory of the law, will be his argument, a man is presumed to intend that which he does, and if he *does* a wrongful or illegal act, the law presumes that he did it intentionally, knowing that it was wrong or illegal, and therefore that it was done corruptly. And now on this subject, I shall read, for the rule is an important one; it is one way or the other, either I am right and the learned counsel is wrong, or he is right and I am wrong. It is a vital fundamental question in this case. All I can say is, that if the position assumed by us is not correct, we have the misfortune to be wrong in company with the best of authority. I now proceed to do what I promised to do heretofore; to establish this position by what I deem to be the highest authority.

As I said before, there is no statute defining it, nor is it a legal term; nor have writers who have written upon it, or learned counsel who have argued it most impressively, for it was the gist of the argument of Wirt, in the trial of Judge Peck, and I maintain that the decision of that case, was a complete endorsement of the position which Mr. Wirt assumed, and which I will assume in this case. It was the ground upon which Judge Peck escaped. Never was stronger proof of oppression and wrongful conduct, than was made out in that case against Judge Peck. A great majority of the nation believed he ought to have been convicted; and yet, because there was not satisfactory proof beyond a doubt of the *wrongful intent* in the acts charged against him, the Senate of the United States acquitted him, and upon that ground alone.

The position is conceded, I think, substantially in the argument of Judge Spencer: "I shall insist that the punishment was so unfit and disproportioned to the offence, as to furnish the clearest proof of a *wicked* and *bad motive*." Stress is laid there upon the wicked and wrong motive that characterized the conduct of Judge Peck.

I shall read from the same book, page 485, and although I shall occupy some time in reading from this authority, I think the Senate will not regret the time spent, nor any attention they may bestow upon the reading.

I can assure the Court that they will find this argument any thing but uninteresting, if splendid genius and logical reasoning, can make any argument interesting.

The specifications of these high misdemeanors are;

"1. Of an arbitrary, unjust, oppressive arrest, under color and pretence that the party had committed a contempt of the Court.

"2. Of an unjust, oppressive, and arbitrary sentence of imprisonment, and of suspension from the practice of the law, under the like color and pretence.

"3. The whole being charged to have been done with the intention, wrongfully and unjustly, to oppress, imprison, and otherwise injure the said Luke E. Lawless under color of law. The offence charged, then, is compounded of an unlawful act done with a guilty intention."

I may as well, in this connection, lest I forget it hereafter, allude to the distinction between the case of Judge Peck, and the Judge at the bar, where the guilty intention was in direct terms charged against the respondent.

In the case at bar, I am not aware that that charge exists, but merely a charge of illegal acts, imprudencies and indiscretions.

The respondent has answered, denying the charge in both its aspects—of an unlawful act and a guilty intention.

The burthen is on the Managers to make good the charge, both as to the illegality of the act, and the guilt of the intention.

It is not enough for them to prove that the act was unlawful, (though this, I apprehend, is beyond their power,) but they must go further, and prove that this unlawful act was done with a guilty intention.

"Even if the Judge were proved to have *mistaken the law*, *that* would not warrant a conviction, unless the guilt of intention be also established. For a mere mistake of the law is no *crime* or *misdemeanor* in a Judge. It is the *intention* that is the essence of every crime. The maxim is (for the principle is so universally admitted, that it has grown into a maxim,) *actus non facit rerum nisi mens sit rea.*

"Sir, if the impeachment had not contained the charge of the guilty intention, the respondent, under the advice of his counsel, would have demurred to it; not by a special demurrer to the form, but a general demurrer to the substance; for the intention is the substance of the crime.

"The Honorable Managers who prepared this article of impeachment, were perfectly aware of this, and have, therefore, very properly charged the intention in express terms."

I shall contend, that in the charges in this case, there is a want of averment of intent, and that that is demurrable; and that we shall take the right of demurrer because we have expressly reserved it in our plea.

"Sir, it is a material part of the charge, and what it was material to the charge, it is material to prove. Let them then prove—first, that the repondent acted unlawfully in pronouncing the sentence which he did pronounce; but if they can make out this proposition, (which we conceive to be impossible,) they have something more behind, for they have charged, that in acting thus unlawfully, he did it with the intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke E. Lawless, under color of law. Now, if the respondent thought that he was acting lawfully, and so acted with the intention to discharge what he conceived to be his duty as a Judge, he cannot be guilty of this charge; for he could not have taken this step with the intention wrongfully and unjustly to oppress and injure Mr. Lawless under color of law. The charge necessarily implies that the Judge was conscious he was usurping a power that he did not possess—that he did it wilfully and knowingly—and that he did it with the intention charged, wrongfully and unjustly to oppress Mr. Lawless under color of law. Now, sir, this proposition the Honorable

Managers are bound to establish in both its terms by the evidence in the case. It will not be enough for them to excite a suspicion, to raise a doubt upon the subject, to leave the minds of the Honorable Court *in inquilibrio;* they must cast the balance distinctly, remove every reasonable doubt, and place the illegality of the act, and the guilt of the purpose, beyond question, before they can expect from this Hon. Court a sentence of guilty.

"One of the Honorable Managers, seeming to perceive the impossibility of satisfying any candid mind that the respondent was guilty of the intention charged, endeavored to escape this rule of the criminal law, by contending that if they fixed on the respondent the commission of an unlawful act, the guilty intention charged in the impeachment followed, as a necessary implication of law. This I deny; for then every mistake of law on the partof a Judge, would become a crime, or a civil injury for which he would be personally responsible. The Honorable Manager sought to illustrate his proposition by the cases of murder and forgery. "If, said he, "a party be proved to have committed a deliberate murder, will he not be presumed to have intended to commit murder? Is separate proof of intention ever required in such a case? Or if a man be proved to have committed forgery, will not the law infer the intention from the act?"—This is plausible: let us examine its solidity: it is the proposition which they must maintain, and from which alone they can have any hope of success in this case. Is it sound?

"They ask, first, if a man be proved to have committed a deliberate murder, whether the law requires any separate proof of a guilty intention? Certainly not! Why? Because he cannot be proved to have committed a deliberate murder, without having fixed upon him the proof of the guilty intention; for that guilty intention is a necessary part of the proof of a deliberate murder. But that is not a case in which the law infers a guilty intention from the simple act. Murder is not a simple act. It is a technical term, presenting a compound of act and intention; the *act* is the killing, the *intent* is of *purpose* and with malice aforethought. But let us take the act by itself, and see whether the law will supply by implication, the guilty intention.

"The analysis will prove the fallacy of this proposition attempted to be maintained by the Honorable Manager, and establish the solidity of the principle for which we contend.

"The simple act is *killing* a reasonable being in the peace of the country. If on mere proof of the act of killing, the law would *imply* the *guilty intention*, then all killing would be murder. But is it so? We know that it is not. Every lawyer is familiar with the three great divisions of homicide, into felonious, excusable and justifiable. He knows that the first, *felonious homicide*, is again subdivided by the criterion of intention; that the first grade is of *murder*, which is done *of purpose* and *with malice aforethought*, the punishment being death; the second *manslaughter*, in which there is the want of that deliberate and guilty intention, but which being done suddenly and in the heat of passion, the offender has the benefit of clergy. Then there is excusable homicide, and killing in self defence or by misfortune; and justifiable homicide, as where the killing is in execution of the sentence of law or for the prevention of crime.

"In all these cases the simple act is the same—it is the killing of a human being. What is it that shades off this same act from a crime of the deepest dye, through all its gradations, till it becomes not only innocent but an act of merit?

It is the intention. If one man poison another *of purpose* and *with malice aforethought*, it is murder. But a mother poisons her child, by giving it arsenic, through mistake for magnesia. She has done it with deliberation, and with the exercise of her best judgment. The act is the same in both cases—it is killing by poison. Why is it *crime* in the one case, and *no crime* in the other? Because of the difference of intention proved; not a different intention implied by law; but a different intention established by proof.

"Take the other illustration put by the Honorable Manager, the case of *forgery*. What is forgery? It is the fraudulent making or alteration of a writing, to the prejudice of another man's right. The fraudulent intention is here again an essential part of the crime. It must be done to the prejudice of another man's right. But the act of imitating the hand writing of another, so as to deceive even the man himself, and lead him to admit it to be his own, may be done, and is often done, without a crime. It is done through playfulness, and is rendered innocent by the absence of all fradulent intention, all intention to prejudice another man's right.

"It is true, that if a man be proved to have made or altered a writing to his own emolument, and to the prejudice of another man's right, and the proof stop there, the forgery is proved, because the fraudulent intention is apparent in the proof of the facts already exhibited. But that is not the case of an intention implied by *operation of law;* it is the case of *an intention proved by the facts in evidence.* The facts are utterly inconsistent with an innocent intention, and are consistent only with a guilty one."

"But permit me, under this head of forgery, with which the Honorable Manager has furnished us, to put another case, rather closer in point of analogy to the case at bar. Let us suppose that the man accused of forgery holds a power of attorney to use the name of his principal in a great variety of specified cases: and suppose that some of the specifications of his powers are so equivocally worded, that he might well have supposed himself authorized to use it in the case charged as a forgery. How would the Court presiding at the trial charge the jury in such a case? Would they say, "Gentlemen, take the power of attorney and examine it, and if *you think*, on a fair construction of the instrument, that it gave him no authority to use the name of his principal in this case, he is guilty of forgery, and you must find him guilty?" No, sir. The Court would take the instrument into their own hands. They would scan its terms.—They would tell the jury, that the power was so ambiguously expressed, that the man might well have supposed himself authorized to do the act which he had done; that if he could reasonably be believed to have supposed himself so authorized, which, under the circumstances, he might well have done, he was guilty of no crime, because the act did not make him guilty unless his intention was guilty—and that in such a case, to doubt was to acquit. Even if the Court themselves, in such a case should be of the opinion that the letter of attorney did not, on a correct construction, authorize the act which had been done, they would then say that he had done an *unlawful act*, and, in a *civil suit*, they would set it aside as against his principal, because it had not been done within the scope of his authority. But could they, in such a case, come to the conclusion that he had done a *criminal* act, and punish him for it criminally? Never, so long as a *fair doubt* could exist as to the guilt of his intention.

"Transfer this reasoning to the case at bar. The respondent's counsel entertain

no doubt that, under the laws of the land, he possessed the power which he exercised on this occasion; that the case was a proper one for its exercise; and that it was exercised in good faith, under a conscientious sense of duty. They believe that the case stands authorized and justified by all the principles and all the precedents which have been placed before you, both in the English and American books. The Honorable Managers on the other hand, say that they differ with us in this opinion; that these authorities gave him no such power; that they extend but a little way; and that the respondent passed the line drawn around him by the books. Now, suppose that this Honorable Court should be of the opinion that the respondent had not the power which he has exercised; that the judges, whose example he has followed, mistook the law of contempt, that elementary writers, hitherto received as authority in our tribunals, have carried the power of the court too far; or suppose they should think that the respondent has misconstrued the authorities; that they do not in reality, go the full length to which he carried the power; yet if they shall, also, believe that from the existing state of the authorities, elementary or reputed, and from the course pursued by other Courts, in like cases, both in England and the United States, the respondent *might have believed* he had the power, *might have thought the case* a proper one for the exercise of the power and *might have been influenced* by a sense of official duty in doing what he did. Is it possible that, under circumstances like these, you can affirm, on your judicial oath, not only that he had no power, but that he *knew* he had no power, and must have consciously and intentionally usurped the power for the guilty purpose of oppressing Lawless? Sir, can it be denied that such is the state of the authorities that any professional man, of the first science in his profession, might, with all his heart and conscience, have fully believed and affirmed the existence of the power? I will venture to assert that you may consult one hundred of the most eminent lawyers in this country on those authorities, and that a great majority of them will express an opinion in favor of the power. Permit me to ask this Honorable Court—the authorities have all been read before you—would it detract from the reputation of the first lawyer in the land to express the opinion that, according to these authorities, the power to punish such a contempt exists in our Courts? You might differ with him in opinion, but would you pronounce him ignorant of his profession—nay more—would you pronounce him a *scoundrel* for having such an opininon? Yet this is the drift of the argument on the other side. You are called upon to pronounce Judge Peck to be a *criminal*, for doing no more than what he saw had been done, not only in England, but in all the Courts of the United States. Yes, sir; in those States which have been the loudest and strongest in favor of the liberty of the press and the right of trial by jury, this power has been exercised by the Courts. Look at Virginia. Is there a State in the Union more truly republican, more lofty and high minded, more ardent in the assertion of all popular rights? Yet in that State, you have seen, sir, that this same power has been asserted and exercised by her Courts, and declared to be indispensable to the protection, independence and utility of those tribunals. Now, sir, with such a host of precedents before him, was it strange that Judge Peck should believe the power to exist? And if he might have so believed, can you infer from the simple act of its exercise, a *criminal intention!* For this is the argument which I am now resisting; the argument being, that if he have not the authority of the law for what he did,

here is no necessity to inquire into intention; because the act being unlawful, the guilty intention follows as a necessary consequence. I say on the contrary, that the question of legal power in this case, is a question on which the most enlightened men of the profession may honestly differ in opinion; and in this case, I consider myself as making a very liberal concession, because I really think the power so clearly asserted by all the authorities, that but for what we have heard, we might well have anticipated an entire unanimity of opinion in its favor. But it is not enough for my argument, to say that it is a power with regard to which enlightened and honest men may well differ in opinion; for if they may *honestly* differ, there can be no *crime* or *misdemeanor* in holding or acting upon either opinion. Yet by the argument which I am resisting, you are called upon to say that if, on *your construction* of the authorities, Judge Peck had not the power which he exercised, it follows as a legal consequence that he acted with the *criminal intention*, charged in the article of impeachment. No, sir; a Judge may mistake the law, and still be an honest man. How often do we find the most upright and enlightened Judges differing in their opinions on questions of law? The one side or the other must be mistaken, for both cannot be right. The one side or the other must be for doing what is unlawful. But does it therefore follow that the side which is in error is *criminal?*

"Nay, we have sometimes even a whole bench admitting the error of a former decision, and solemnly retracting that error; but who ever supposed that they were criminal either in the first opinion or the last? The law is not one of the exact sciences; you cannot reduce its principles to demonstration. Differences of opinions among its professors are proverbial. It is for this reason that appellate courts are instituted. We see the opinion of inferior courts reversed every day, and this not only in civil but in criminal matters. But no one ever thought of impeaching an inferior Court because it has mistaken the law; and yet, according to this argument, they ought to be impeached in every such case—because an unlawful act, we are told, necessarily involves a criminal intention. I respectfully insist, therefore, that although you should differ with Judge Peck and his counsel, with respect to the extent of his judicial powers, and think that he had not the power to punish the conduct of Mr. Lawless, as a contempt of Court, it does not follow that he is guilty of the misdemeanor charged in the impeachment; because the injury still remains, whether this was an honest mistake of judgment, or whether he acted with the guilty intention, charged in the impeachment; and that this guilty intention must be placed beyond doubt, before you can convict him, because the principle of the criminal law is, that to doubt is to acquit. I insist, too, that this guilty intention is not to be inferred from the alleged incorrectness of his judicial opinion, but must be satisfactorily proved by the evidence in the cause. The Hon. Manager, I humbly conceive, then, was rather unfortunate in his illustrations from the cases of murder and forgery. He did not perceive that the very terms in which he stated his propositions involved that very proof of intention, as a fact which he supposed the law would raise by implication.

"On the same subject of intention, I infer from a remark madeby another of the Hon. Managers, (Mr. Storrs,) in one of those incidental debates on the evidence, of which we have had so many, that he thinks he may fairly turn on the respondent a principle urged by him against Mr. Lawless in his defence

before the House of Representatives, to wit, that every man is presumed to intend the natural consequences of his own actions. Nothing is more true than this principle; but the Hon. Manager must, I think, have laid aside his usual discrimination, when he supposed it applicable to the question now before us. It relates to the physical, practical consequences of an action which, in the ordinary course of nature, must follow it. There a man is always presumed to intend. Yet, his moral guilt or innocence may remain unsettled, and always do remain unsettled, unless the consequences be such as could have been connected only with a guilty intention.

"The man who, in open day, presents a gun at the breast of another, which he knows to be loaded, and discharges it, must be presumed to have intended to kill him, because that is the natural consequence of his act. But the moral and legal guilt or innocence of the act, remains to be settled by other considerations. The man whom he has slain may have been an assassin who had come to murder him, or a robber who was in the act of breaking open his house to plunder him, or a criminal who was resisting to death the service of a process; in all which cases, though he did not intend the natural consequences of his own act, he is held excused or justified by the law. Hunters, in the imperfect light of the dawn, or of the twilight, have been known to draw the trigger on each other, in the forest, under a mistake that they were the game of which they were mutually in pursuit, and death, the natural consequence, has followed; yet there has been no legal or moral guilt in the act, because there was no such intention. The respondent, in his defence before the House of Representatives, applied the principle thus: the natural effect of such a publication as that of Mr. Lawless, was to bring the Court into open disgrace and contempt before the public, and to prejudice the minds of the community with regard to causes still pending in Court; and these being the natural consequences of such a publication, Mr. Lawless must be supposed to have intended them, because every man, is supposed to intend the obvious and natural consequences of his own actions. The argument, I humbly apprehend, was perfectly fair, and fixed, in that case, the guilt of Mr. Lawless; because those consequences were such as could be connected only with a guilty purpose; they were moral consequences and guilty in themselves.

"But let us see with what candor the principle can be turned on Judge Peck, to the end of fixing guilt on him? The natural consequence of his order to imprison Lawless for twenty-four hours, was that he should be so imprisoned; he is, therefore, to be presumed to have intended that consequence; the natural consequence of his order of suspension from practice for eighteen months, was that he should be so suspended, and he is therefore to be presumed to have intended that consequence. This, I admit. He intended that he should be imprisoned; he intended that he should be suspended from practice. But this is not the intention charged in the impeachment, and which is here in question. The intention here charged is wrongfully and unjustly to imprison and injure him under color of law; and unless intentional wrong and injustice can be predicated of every order of imprisonment and suspension, as a natural consequence, I do not see how they can be predicated of this order. Does the Hon. Manager intend to argue that the Judge had no lawful authority to pass the sentence which he did; that the imprisonment and suspension being without authority, were wrongful and oppressive; and that the wrongful and oppressive

imprisonment and suspension, being the natural consequences of the Judge's unlawful act, must be presumed to have been intended by him? Does not the gentleman perceive that by this process of reasoning, he is begging the whole question; first, the Judge acted without the authority of law; secondly, that he knew he was acting without the authority of law; for it is only by the assumption of both these positions, that he can arrive at his consequence of an intention wrongfully and unjustly to oppress and injure. For he surely does not mean to contend that every unlawful imprisonment flows from intentional oppression in the Judge who has ordered it.

"How often has bail been refused through the mistakes of Judges, when it ought to have been allowed; and the consequence invariably is an unlawful imprisonment?—How often have men been discharged on *habeas corpus*, who have been wrongfully imprisoned through the mistake of Judges? Would the gentleman apply his argument to such cases? Would he say that *wrong, oppression*, and injustice are the natural consequences of such mistakes; and that as every man is presumed to intend the natural consequences of his own actions, therefore those Judges (admitted to have acted under an honest mistake of their duty) must be presumed to have *intended* to *wrong, oppress* and *injure* the man whom they have sentenced?

"Does he not perceive that by such an argument, he would be maintaining a solecism in terms, and that the whole fallacy arises from the misapplication of a principle perfectly true and sound in itself? Every man must, indeed be presumed to intend the *natural* and *practical* consequences of his own actions.

"But the *moral character* of his actions takes its color from his mind; and the act whatever it may be, does not make him guilty, unless his mind be guilty. If the consequences which he aims to produce, are necessarily immoral in themselves, his mind is guilty, and imparts its guilt to his actions.

"But if intending to do right, he does, through mistake what is wrong, what kind of logic is that, which would seek to fasten upon him by induction, a guilty intention against the very terms of the hypothesis? Although it be true then, that every man is to be presumed to intend the natural consequences of his own actions, and therefore that Judge Peck must be presumed to have intended that Mr. Lawless should be imprisoned and suspended from practice, it does not follow that he intended wrongfully and unjustly to oppress and injure him; because wrong and injustice are not the natural consequences of the honest delivery of an official opinion by a Judge.—The very reason why a man is presumed to intend the natural consequences of his own actions and is held responsible for them, is because he must have foreseen those consequences at the time of his action. But can a Judge be presumed to foresee that wrong and injustice will follow from his pronouncing an opinion, which he honestly believes to be a correct opinion and to be demanded by his official duty? The question carries its own answer with it, and fairly exposes, I conceive, the misapplications of this principle to the point under consideration.

"We are not now discussing the question of fact. Whether Judge Peck erred or not in the expression of his opinion, and even if he did err, whether his error was so palpable that he must have been conscious of it, or whether the case was attended with any circumstances which will justify this honorable Court in pronouncing the respondent guilty of the intention charged, will constitutea subsequent part of my inquiry. We are now engaged in settling the preliminary

principles of the discussion, and fixing the true question before the Court; and I insist that the guilty intention charged by the article of the impeachment, is an essential part of the offence, and must be clearly and distinctly made out by the proof, before the Honorable Managers can call for the conviction of the respondent.

"I insist, further, that even if the Honorable Managers could succeed in proving that the Judge was not warranted by the laws of the land, in punishing the publications of Mr. Lawless as a contempt, the guilty intention would still remain to be proved, For I deny the proposition that the law will annex, by implication, a criminal intention to every opinion of a Judge, which is shown to be erroneous. And, while I admit that every man is presumed to intend the natural consequences of his own actions because he must have foreseen that they would follow, I deny that the respondent is to be assumed to have intended wrongfully and unjustly to imprison, oppress and injure Luke E. Lawless, by the sentence which he pronounced, because wrong and injustice are not the natural consequences of a judicial opinion honestly expressed, and, therefore, could not have been foreseen by the respondent, when he pronounced that opinion, even although the opinion may have been held to have been erroneous; and I contend, that even although the Judge should be shown to have acted erroneously in point of law, (which I confidently believe cannot be shown) yet, unless the principle of the criminal law are to be, now and here, for the first time torn up and reversed, the Judge is to be presumed to have acted innocently and honestly, until the contrary shall be established by the proofs.

"But, I find that I have not yet done with these preliminary principles; for another of the Honorable Managers (Mr. Wickliffe), has advanced a proposition so novel, and so directly confronted by all the authorities, that had it not been for some other things that I have heard in this case, I should have heard it with with unmixed surprise. The Honorable Manager tells us, that he cares not for proof of intention; that he cares not whether the Judge acted wrong from ignorance or intention. That ignorance of the law is no excuse in an unlearned layman, much less in a learned Judge. That every man is presumed to know the law, and *a fortiori* a Judge, whose office it is to understand and administer the law. If, therefore, a Judge through ignorance of the law has done that which he had no power to do, he is just as guilty in the eye of the law, as if he had sinned intentionally against the light of knowledge.

"Then, according to this process of reasoning, a mistake of the law by a Judge is an impeachable offence! But is it possible that the Honorable Manager can mean to contend that a Judge is answerable, either civilly or criminally, for an error of judgment; that he can be either sued, indicted, or impeached for such an error? If such be his meaning, he is in direct conflict with all the authorities on the subject. The question is not a new one. It has been long since settled, both in England and the United States, and I am not aware that for many centuries any judge or advocate has, even by inadvertence, sanctioned or even countenanced the position which has been thrown out by the gentleman. From the reign of Edward III., to the present day, the current of authorities is clear and uniform the other way; and establish, beyond controversy, the principle that the judge of a court of record is not answerable, either civilly or criminally, for a mistake of judgment in his judicial character. The English authorities are reviewed by Chief Justice Kent, in the case of Yates and Lansing, 5

Johnson's Reports, 291. The case was that of a civil suit against Chancellor Lansing for having punished, as a contempt, an act which had been finally decided by the high court of error and impeachments not to be so punishable. In the page to which I have referred, Chief Justice Kent announces in the following terms the propositions which he establishes by the English authorities:

"Judicial exercise of power," continues Judge Kent, "is imposed upon the Courts.

"They *must* decide and act according to their judgment, and therefore the law will protect them. The Chancellor, in the case of the plaintiff, was bound in duty to imprison and reimprison him, if he considered his conduct as amounting to a contempt of his Court. The obligations of his office, left him no violation. He was as much bound to punish a contempt committed in his Court, as he was bound in any other case to exercise his power. He may possibly have erred in judgment in calling an act a contempt, which did not amount to one, and in regarding a discharge as null when it was binding. This Court may have erred in the same way; still it was but an error of judgment, for which neither the Chancellor nor the Judges of the Court are, or can be responsible in a civil suit. Such responsibility would be an anomaly in jurisprudence. No statute could have intended such atrocious oppression and injustice.

"The penalty is given only for the voluntary and wilful acts of indivduals, acting in a private or ministerial capacity. It is a mulct, and given by way of punishment.—The person who forfeits it, must knowingly, contrary to the act, reimprison, or cause the party to be reimprisoned. There must be the *scienter*, or *intentional violation* of the statute; and this can never be imputed to the judicial proceedings of a Court.

"It would be an impeachable offence, which can never be avowed or shown, but under the force of impeachment."

What does the Judge declare would be an impeachable offence? The acting with knowledge (*scienter*) that the Judge was violating the law—"the intentional violation of the law."

The Chancellor, he says, was bound to imprison the party if he considered his conduct as a contempt of the Court. He might have been mistaken in considering that as a contempt, which in truth, was not one; but this would have been a mere error of the judgment, for which he was not answerable, either civilly, much less criminally. If he knew it was not a contempt, and still punish it as one, it would have been an intentional violation of the law, which would have been an impeachable offence.

Chief Justice Kent winds up the able opinion which we have been considering, with these emphatic remarks: "No man can foresee the disastrous consequences of a precedent in favor of such a suit.

"Whenever we subject the established Courts of the land, to the degeneration of private prosecution, we subdue their independence, and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon every thing sacred in society, and to overturn those institutions which have been hitherto deemed the best guardians of liberty."

It will be said that Judge Kent is here speaking only of a private suit? And is a Judge answearble criminally for an act, for which he would not be

answerable even civilly? Is it less calculated to subdue his independence to hold him answerable to an impeachment for a mere error of judgment? What man would hold the office of a Judge under such a responsibility? Sir, if it had been supposed possible to sustain an *impeachment* for an error of judgment, Chancellor Lansing would not have escaped the experiment. The Chancellor had committed Mr. Gates for a contempt. Judge Spencer holding the commitment illegal, had discharged him on *habeas corpus*. The Chancellor holding the discharge to be illegal, again committed him. Judge Spencer again discharged him on *habeas corpus*. The Chancellor, the third time ordered him to be imprisoned. From this last order, Mr. Emmett, as counsel for Yates, moved the Supreme Court of the State for a *habeas corpus*. The relief was refused by the Supreme Court, and the commitment by the Chancellor sustained. The case was carried by writ of error to the high Court of errors and impeachments, where the judgment of the Supreme Court was reversed, and Yates was discharged.

"I have examined, with all the attention and care in my power, the various cases of impeachments of judges, both in England and the United States, and I have not observed that any counsel, even under the severest stress of the evidence, has taken refuge in so bold a proposition as this which we are considering—that error of judgment is an impeachable offence; on the contrary, I think it will be found, on the strictest perusal of all the cases that have been cited, that the guilty intention is the gist of the impeachment. I will not detain you with an analysis of the cases, with a view to this point; they have been already analyzed and are fresh in your recollection; and if the Hon. Managers who are to reply, have any thought of maintaining this novel proposition of their colleagues, I ask them to refer to any passage in these trials, or to any authority of credit which lends to it even the weakest countenance. The Honorable Managers have referred to a private opinion of Mr. Erskine on another part of this case. Permit me to give you his views on the question now under consideration. It is in his speech on the trial of the printer, John Stockdale, for a libel, and will be found in page 374 of the first volume of his speeches, (New York edition of 1813.) It is as follows:

"The sum and substance, therefore, of the paragraph is only this—that an impeachment for error in judgment, is not consistent with the theory or the practice of the English government. So say I. I say without reserve, speaking merely in the abstract, and not meaning todecide upon the merits of Mr. Hastings' cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which though not binding on the house of commons, ought to be a guide in its proceedings. I say, that the extraordinary jurisdiction of impeachment ought never to be assumed to expose error, or to scourge misfortune, but to hold up a terrible example to corruption and wilful abuse of authority by extra-legal pains. If public men are always punished with due severity when the source of their misconduct appears to have been selfishly corrupt and criminal, the public can never suffer when their errors are treated with gentleness. From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees by the language of the saving judgment, that the only title to it is an honest and zealous intention. If at this moment, gentlemen, or, indeed, in any other in the whole course of our history, the people of England were to call upon every

man in this impeaching house of commons, who had given his voice on public questions, or acted in authority, civil or military, to answer for the issue of our councils and our wars; and if honest, single intentions for the public service were refused as answers to impeachments, we should have many relations to mourn for, and many friends to deplore.

For my own part, gentlemen, I feel, I hope, for my country as much as any man that inhabits it; but I would rather see it fall and be buried in its ruins, than lend my voice to wound any minister, or other responsible person, however unfortunate, who had fairly followed the lights of his understanding, and the dictates of his conscience for their preservation.

Gentlemen, this is no theory of mine; it is the language of English law, and the protection which it affords to every man in office, from the highest to the lowest trust of government.

In no one instance that can be named, foreign or domestic, did the Court of King's Bench ever interpose its extraordinary jurisdiction, by information, against any magistrate, for the widest departure from the rule of his duty, without the plainest and clearest proof of corruption, to every such application, not so supported; the constant answer has been: Go to a grand jury with your complaint. God forbid that a magistrate should suffer from an error in judgment, if his purpose was honestly to discharge his trust.

We cannot stop the ordinary course of justice; but whenever the Court has discretion such a magistrate is entitled to its protection.

I appeal to the noble Judge, and to every man who hears me, for the truth and universality of this position. And it would be a strange solecism to assist, that in a case where the Supreme Court of criminal justice in the nation would refuse to interpose an extraordinary, though a legal, jurisdiction, on the principle that the ordinary execution of the laws should never be exceeded, but for the punishment of malignant guilt, the commons, in their higher capacity, growing out of the same constitution, should reject that principle, and stretch them still further by a jurisdiction still more *eccentric*.

Many impeachments have taken place, because the law could not adequately punish the objects of them; but who ever heard of one being set on foot because the law upon principle *would not* punish them? Many impeachments have been adopted for a *higher* example than a prosecution in the ordinary courts, but surely never for a different example. The matter, therefore, in the offensive paragraph is not only an indisputable truth, but a truth in the propagation of which all are concerned."

Thus much for the purpose of showing that the guilty intention charged in the impeachment is not matter of form but matter of substance; that it is a distinct and substantial charge; that it is not the *mal a mens* which constitutes the very essence of the crime, and must be made out to the perfect and undoubting satisfaction of the court before a sentence of guilty can be pronounced; that to establish it, it is not enough to prove that the act done was without the authority of the law, for that this intention cannot be inferred from the mere illegality of the act; that mistake is no crime, and that so long as the act can, upon the evidence, be referred to mistake, a court of criminal jurisdiction will no more *presume* a guilty intention than a court of conscience will presume a fraud; and, finally, that the guilty intention must be made manifest by the evidence beyond a reasonable doubt, before a sentence of guilty can be pro-

nounced. Indeed, I understood the learned Manager whose science and talents so long adorned the bench of New York, to have admitted, what his colleague denied, that mere proof of an unlawful act would not suffice, unless connected with proof of a guilty motive.

It is true that a judicial act may be so grossly and palpably illegal as to render it impossible to refer it to a mistake, more especially if there be any proof of previous malice on the part of the Judge against the defendant.

For example, if on a trial for murder, a Judge were to instruct the jury that malice aforethought was no essential part of the crime, that there was no such thing as chance medley, no excuse for self-defence—such a palpable violation of the known and settled law of the land, to procure the conviction of an enemy, would well justify the conclusion of a malignant and guilty intention. But on a nice question of law, where amid the conflict, or apparent conflict of numerous authorities, different opinions may be fairly and honestly entertained, in such a case as this to infer a guilty intention from a mere difference of opinion, would be an injustice so crying and horrible, that every man would start back from the decision with dismay and execrations.

I admit, also, that a case may be conceived in which a judge may exercise even a legitimate power with such an enormous disproportion of severity, as, connected with proof of previous hostility against the individual, could leave no doubt of the criminality of the intentions, and expose him fairly to an impeachment for a corrupt abuse of his powers; as if on a conviction for a common assault and battery, a Judge were to fine a defendant to the whole amount of a large fortune, or imprison him for life.

I admit, therefore, that a conscious usurpation of power for the guilty purpose of oppression, or an exercise of lawful power with excessive severity for the same guilty purpose, will equally expose a Judge to impeachment. But in either case, the guilty purpose must be placed beyond reasonable doubt by the facts of the case. It must not, in the first case, be a mere difference of opinion with regard to the existence of the power, in a case fairly susceptible of a difference of opinion; nor, in the second, a mere difference of opinion with regard to the just *quantum* of punishment deserved by the case, as to which men equally honest may well differ. But the case must be so grossly enormous as to be unsusceptible of an honest difference of opinion, either as to the power or the punishment, and incapable of being rationally referred to any other than a guilty purpose."

I have now, Mr. President, submitted the argument of Mr. Wirt, as to the construction of the term, "corrupt conduct in office," and what it is necessary to allege and prove; and applying his reasoning to the case at bar, we say, that in this case, before they can convict the respondent of corrupt conduct in office, they must in connection with their allegation of facts allege the corrupt intent, and they must also prove it. If not alleged in this case in connection with these charges of acts done, whether unlawfully or wrongfully, then the charges are demurrable upon their face. They are not entitled to the attention of the Court at all, because there is not enough spread upon the record to make *prima facie* proof of the charge of corrupt conduct in office; but we charge that they must prove beyond a reasonable doubt, to your satisfaction, that these various acts that they charge home upon the respondent, and some of which they have proven, although wrongful, although illegal, were at the same time, done with

a corrupt motive; that the intention was the main point in the act itself, and that it is incumbent here upon the prosecution to show that these illegal acts were done under such circumstances as to preclude a reasonable doubt, under which by the principle of the criminal law, the respondent is entitled to shelter himself—that it must be in other words an irresistible inference from the testimony in this case, that the acts done were done with corrupt intention. We contend further, that if this be in doubt, that if the conduct of the respondent be upon the face of this evidence, such evidence as we shall offer to you reconcilable with innocent intention, then you cannot convict him, because the well settled principles of law compel you—if his conduct be reconcilable, upon the evidence, with innocent intention—they compel you to give him the benefit of that construction.

But not to dwell. In this connection I remark further, that the acts for which a civil officer is impeachable must be acts done in office. On this point I refer the Hon. Court to Rawle, on the Constitution, page 215. Story, page 269 and 270. I will not pause to read those opinions, because it is an immaterial point in the case. Rawle takes one side of the question—that this is a correct doctrine—and Judge Story the other—it is a matter still *sub judice*. Although I say this is an open question, it is not material here, for all the acts charged here were done in office.

Secondly. I remark in this connection, the power of impeachment is limited to acts done during the term of office of the person impeached, and no impeachment lies after a term of office has expired. Although this Hon. Court, by a resolution passed at an early period of this trial, assumed to exercise the power of enquiring into acts done by the respondent, during a term of office long since expired, yet I conceive it to be my previlege and I feel it to be my duty to urge upon this Court, that it has not the right in coming to its judgment, to look behind the term of office, which he now holds; that they cannot, under the well settled principles of law of construction, travel back to acts done by him at a former period, during a different term of office. And although the Court has passed a resolution to inquire into these matters, and has inquired into them, it does not follow necessarily that the Court will take them into consideration in their decision, and I hope I do not trespass by briefly submitting an argument upon that subject. I read from Story, page 271: "As it is declared in one clause of the Constitution, that 'judgment in cases of impeachment, shall not extend further than a removal from office, and disqualification to hold any office of honor, trust, or profit, under the United States;' and in another clause, that 'the president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes or misdemeanors,' it would seem to follow, that the Senate, on the conviction, were bound, in all cases, to enter a judgment of removal from office, though it has a discretion, as to inflicting the punishment of disqualification. If then, there must be a judgment of removal from office, it would seem to follow, that the Constitution contemplated that the party was still in office at the time of impeachment; if he was not, his offence was still liable to be tried and punished in the ordinary tribunals of justice. And it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offence, when the most important object, for which the remedy was given, was no longer necessary or attainable. And

although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt, whether it can be pronounced without being coupled with a removal from office. There is also so much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the State against gross official misdemeanors. It touches neither his person, nor his property; but simply divests him of his political capacity."

Now in this connection permit me to read again our own Constitution upon that subject: "Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the State; but the party impeached shall be liable to indictment, trial and punishment, according to law."

The language of the Constitution of the United States is, "judgment in cases of impeachment shall not extend further than a removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States." Now if under that provision of the Constitution of the United States, the doctrine is maintainable, that a Judge cannot be impeached for acts done after this term of office has expired, how irresistable the argument that such cannot be done under the provisions of our own Constitution. Under the provisions of the Constitution of the United States, the punishment shall not extend beyond removal from office, and the disqualification to hold office. The propositions being separate, the *function* authorizes the idea that there may be these distinct punishments, removal from office being one, disqualificationto hold office being another. Yet reasoning on general principles, Judge Story has arrived at the conclusion, and maintains, that impeachment cannot be sustained for an act done after a term of office has expired, and he lays some stress or doubt on the question whether or not the judgment of disqualification can be rendered unless accompanied with removal from office. He takes that into consideration in his grounds upon which he arrives at his general result. I had not supposed that was the construction. Judge Story does not assert it, but he lays some stress upon it. I supposed that there might be under that Constitution two judgments, entirely distinct; one removal, the other disqualification; hence under a fair construction of that Constitution there might be punishment after the office has expired. But our Constitution is conclusive upon that point. There can be but two judgments; one judgment, removal, the other judgment, removal with disqualification, and are designed fortunately to be only two judgments which this Court has power to render. The ingredient, the element of both, is removal from office. In the one case the circumstances proven may warrant that alone, as sufficient punishment; in another and more aggravated case, it may be necessary to save the people from future misconduct in office on the part of the person accused, to impose the additional penalty of disqualification from holding any office of profit, honor or trust. Now if these be the only judgments that can be rendered, I ask if it does not demonstrate the proposition that the Judge can be impeachable only for acts done during his term of holding office, nor is it modified at all by the ingenious argument of the learned counsel for the Managers, that Judge Hubbell has continued in office by virtue of a re-election.

But the test argument is this: Suppose he had not been re-elected—after his term of office did expire, would this Court dare to assume the responsibility

of impeaching him for acts done during his term of office? For his conduct in the Haney case for instance? I ask you if you would so far stultify yourselves? How will you apply impeachment in such a case? His term long ago expired, and he became a private citizen. The judgment on impeachment is, or would be, removal. That, however, is nonsense, for what are you to remove him from? It is nonsense to apply such a penalty to a private citizen. But these questions if open and unsettled, are to be decided by the Court. Story (273,) says: "It is not intended to express any opinion in these commentaries, as to which is the true exposition of the Constitution on the points above stated. They are brought before the learned reader, as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal, constituting the Court of impeachment, when occasion shall arise."

It is equally true here. It is now for this Court of Impeachment to settle, in its judgment, a matter which of course is perfectly novel here under our Constitution, because this is the first case of impeachment under it.

And now, in general, as to what is corrupt conduct in office, and crimes and misdemeanors which are impeachable, or, in other words, what is impeachable matter, is not for the Assembly to decide. It is for this Court to ascertain from parliamentary usage and the common law. I read from Story, p. 264:

"Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain, what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a disposition of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to, and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert, that the power of impeachment is limited to offences positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors.

"It seems, then, to be the settled doctrine of the High Court of Impeachment, that though the common law cannot be a foundation of a jurisdiction not given by the constitution, or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that what are, and what are not high crimes and misdemeanors, is to be ascertained by a recurrence to that great basis of American jurisprudence."

See Jefferson's Manual, sec. 53, title, Impeachment; Blount's Trial on Impeachment, pp. 29–31; Ib., pp. 75–80, (Philadelphia, 1799.) But see Ib., pp. 42-46.

In another clause of the constitution, power is given to the President to grant reprieves and pardons for offences against the United States, except in cases of Impeachment; thus showing that impeachable offences are deemed offences against the United States. If the Senate may then declare what are offences against the United States by recurrence to the common law, why may not the Courts of the United States, under the express delegation of jurisdiction over "all crimes and offences cognizable under the authority of the United States," by the act of 1789, chapter 20, sec. 11, act in the same manner?

It is not to be left to the arbitrary discretion of the Assembly, and if it is not settled by parliamentary usage and common law, we are entirely at sea here; and it is for the Court to decide what is impeachable matter, and not for the Hon. Assembly. Then it is for this Court to ascertain and settle for itself what is impeachable matter, which they will entertain, what it is on which they will compel the respondent to defend himself before them—what it is that gives them jurisdiction over the case, over his person, and over his fate. Now, to make a personal application to the case at bar; I had not the pleasure of hearing the learned counsel for the Managers, when he opened this impeachment to the Court, but I have read it in his printed speech—I know not whether truly reported—but with great surprise that the position was taken and urged upon this Court, that in the absence of any definition of what was impeachable matter, under the head of corrupt conduct in office, or crimes and misdemeanors, it was the province of the Assembly to determine that matter, and that this Court was bound by that determination. I was surprized to learn that so good a lawyer should have ventured to present to this Court so monstrous a proposition. If he had asserted that parliamentary usage could not be referred to—that the common law could not be referred to for light—that the meaning of these terms were wholly unsettled, and that it was left to the arbitrary power and caprice of the Senate—that proposition might not have surprised me; and that proposition in the language of these authorities is the only alternative left when you discard parliamentary usage and common law. But no lawyer has ever contended that it was for the House of Representatives, that it was for the impeaching body, not only to fix the nature of the accusations, but to say that they constitute necessarily impeachable matter, and that the Court, the Senate, must take jurisdiction, and must act too, upon the judgment already obligatory upon them, by the very body which accuses, making the Senate, in point of fact, the mere instruments to carry out the design of the prosecuting body. Such is not the theory of the law of impeachments. Such is not the theory of the jurisdiction and power of the Court which is to try them. If it were so, I should, indeed, pity the public officers of a State. I should pity, in this case, the respondent at the bar. It is one thing to accuse, it is another thing to prove, and it is another thing to convict; and if the Assembly may declare what is impeachable matter, and send that matter to the Senate, and the Senate is bound to accept it as impeachable matter, then there is no safety in holding office. The argument goes to the extent, if I understand it, that if the Assembly see fit, in any given case of impeachment of any public officer, to accuse him before the Senate in the form of impeachment, with certain acts—that the Senate is bound to entertain that impeachment after the judgment is already entered up, that these acts are impeachable, and that the only duty of the Senate is the duty of a jury to find the facts to be truly alleged; the Assembly, in fact, constituting the court that renders the judgment, and renders it in advance. This is not the doctrine of the law. If so, what protection is there for any public officer, accused, against party spirit, against personal rancor, against the spirit of persecution that may pervade the Assembly, and may prompt it to put charges of a trifling character, of no account, totally malicious, against the victim it wishes to hunt down; and, forsooth, the Senate must regard it as impeachable matter, and all it has to do is to be the party to impeach. This is the doctrine contended for by the learned counsel for the Managers.

Again, if this doctrine be true as contended for by the learned counsel, it invests the Hon. the Assembly of this State with the power of passing the most odious *ex post facto* laws, and, in substance, directly violating the inhibitions of the constitution, because it clothes the Assembly with power to declare what was innocently intended, a criminal and impeachable act. It converts the Assembly into an inquisition, which may seek out and inform on the conduct of the accused party; and although it may have been innocent, and known to have been innocent, yet it may declare it impeachable, and send it to the Senate in the form of an accusation, and in this way determine the judgment that is already entered. It is only making that a criminal and impeachable act, which, at the time it was committed, was entirely innocent. In England it is a matter of history, that it is required of the independence and stability of the lords to maintain the right of judicature in cases of impeachment. Encroachments there have been frequently attempted upon it both by the commons and the crown. Woodesson, in his Lectures, p. 367, says:

"Under Richard II. the ceremony of addressing the throne, before the supposed delinquents were charged by name—seems entirely disused. That prince was seduced to aim at arbitrary power, and therefore wished to abrogate parliamentary impeachments. In the tenth year of his reign, he proposed to the Judges among others, the following question: since the king can, whenever he pleases, remove any of his judges and officers, and justify or punish them for their offences, whether the lords and commons can, without the will of the king, impeach in parliament any of the said judges or officers for any of their offences?" To which the answer was, "That they cannot; and if any one should do so, he is to be punished as a traitor." The flagrant prostitution of those who advanced this dangerous and unconstitutional doctrine, was severely animadverted on at a parliament holden the succeeding year. Another parliament, indeed, at the close of the same reign, being entirely at the king's devotion, declared the opinions given by the Judges to be such as good and liege people ought to have pronounced. But the proceedings of that meeting were annulled by the legislature after the accession of Henry IV., and thus the right of impeachment, after a short conflict, finally triumphed over the attempts to overthrow it."

"The impeachment of the four lords at the end of king William's reign, gave occasion to much dissension between the two houses, and to very intemperate recrimination. The commons being repeatedly reminded by the peers of their unjust and unprecedented delays in the prosecution, resented these notices with unbecoming vehemence. The intercourse of acrimonious messages is unnecessary to be recited. On the whole, the upper house manifested more decent cautiousness of expression, more dignified and moderate conduct than the leaders of the other Assembly. The principal points adhered to by the peers were, first, that in the case of wilful and unprecedented delays, their house may, in justice to the accused, though against the will of the commons, fix a day for the trial of any impeachment, and proceed to condemnation or acquittal. 2dly. That no lord of parliament impeached of high crimes and misdemeanors, can be precluded from voting on any occasion except his own trial; whereas the commons had insisted that those charged with the same offences, ought not to acquit each other. And, lastly, this was one of the occasions before alluded to, of rejecting the proposal of a committee to adjust preliminaries. The lords declared that such step was unprecedented in impeachments for

high crimes and misdemeanors; that all points of judicature were their peculiar province; and that the manner of the demand was a direct invasion of their rights. These points, though likely to take the same course in future, provoked the incensed commons to very violent resolutions; whose conduct, indeed, seems much actuated by interested views, or vindictive animosity. But though the lords will not suffer their constitutional power of judicature to be entrenched upon, they have often consented to a free conference, and then determined on the reasonableness of any demand made by the commons, and have conceded to them the right of beginning with which impeachment they thought proper, where more than one have awaited that decision."

In the case of Lord Danby, however, the commons strenuously denied that the king could, by his prerogative, intercept parliamentary prosecutions in their course—or, to speak more technically, that a pardon was pleadable in bar to an impeachment. The difference is very important; for if the pardon is not to be allowed till after judgment, it then comes too late to clear away the consequences of attainder; the blood ceases to be inheritable, and cannot be completely restored but by act of parliament; the king may, indeed, release forfeitures and confer new titles, but cannot revive the family honors in their ancient state of precedence. It was, therefore, urged, that if a pardon could instantly obstruct parliamentary prosecutions, the constitution has in vain lodged a right of impeaching in the commons, and of judicature in the peers; these powers are absolutely fruitless and chimerical. In common cases, where the king is esteemed the prosecutor, he may at any time, in any stage, be properly allowed to discontinue his own suit. But we might expect some difference, when the accusation is commenced and proceeded in by the representative body of the nation on behalf of themselves and their constituents. Yet the doubt remains uncleared; and that great minister, who for many years had been the principal adviser of British measures, was detained a prisoner in the Tower, with the king's full and free pardon in his possession. When the earl first applied to be bailed, and so released from such confinement, the opinion of the judges of the king's bench was against it; and one of them, in particular, declared, that the acceptance of a pardon was a tacit confession of guilt.

This seems too rigorous a construction; an innocent man may irreproachably accept a pardon as the only indemnity and resource from the effects of perjury and malevolence, though, perhaps, to disdain this refuge would be a mark of greater heroism and magnanimity. But the ground of the determination in the King's Bench was, that though that Court had a discretional power of bailing even in cases of high treason, yet, this lord being committed by a jurisdiction superior to theirs, they could not interfere to give him his enlargement. However, the earl was afterwards released on bail, by the unanimous opinion of the same Court, then consisting of four new judges. It was then argued, that bailing would not affect the impeachment, but only modify the confinement. It was not to enfranchise him out of custody, but only to lengthen the chain. The parliament was dissolved; it was wholly uncertain when a new one would meet; to keep him, therefore, indefinitely in prison, when there was no Court in being before which he could be tried, was a hardship too extreme to be endured. Yet he was bailed to appear at the next session of parliament, which was an affirmance of the commitment, and a proof that it was not avoided or discharged. For an impeachment is intercepted but not extinguished, by the

dissolution of parliament; the charge may be resumed when the legislature is again convoked, in like manner as an indictment is not discontinued by demise of the crown. Thus, however, concluded this singular and eventful prosecution; for it was not revived by any succeeding house of commons; though the same peer was afterwards impeached for high crimes and misdemeanors, but the prosecution was permitted to languish, and at the distance of above six years was finally dismissed by the House of Lords. As to the first question of importance which was debated in his case, that was at length peremptorily settled by the statute 12 and 13 Will. III, c. 2, § 3, enacting that no pardon under the great seal should be pleadable to an impeachment, by the Commons in parliament. We have before noticed the effect and the reasonableness of this provision. It does not finally preclude the extension of royal mercy. The king may still remit the execution of the sentence, and has exercised this prerogative, in cases of impeachment, since the passing of that law.

And so as the English House of Lords under all circumstances, has stood up faithfully and consistently to its judicature, against the Commons on one hand, and the Crown on the other; so I hope the Senate of Wisconsin, the high Court of impeachment here, will not tolerate the monstrous doctrine claimed here by the counsel for the Managers, that the determination of what is the subject of impeachment matter, is lodged in the Assembly; and that this Senate are but the helpless and passive instruments of the impeaching power. I trust the judgment of this Court will be decisive upon that subject.

Mr. President, I have finished all I have to say upon the legal positions—or nearly all—in this case. I design now to go upon another branch of this case, and if the Court will grant me time, I would like to be relieved for a little while.

The Court adjourned till 3 o'clock, P. M.

AFTERNOON SESSION.

Argument of Mr. Arnold continued.

Mr. President, I had finished all that I had to say upon the subject of the legal prohibitions which occurred to me as pertinent to the present case. I was intending at the period of the adjournment, to hastily run over the different charges and specifications preferred against the respondent, with a view to apply to them by a running commentary, the principles which I have endeavored to establish, and also to state such explanatory proof in regard to them, as we expect to be able to offer. It is not my design in doing this to undertake any thing that is worthy to be considered as an argument. As I stated in the outset, that will be more appropriate at another stage of these proceedings; but barely for the purpose, while those principles are fresh upon the minds of the Court, to ask their attention to the specific charges which are pending before them

The first article is as follows, (which Mr. Arnold read.)

This is a charge, Mr. President, which hastily read and on the first impression would seem to convey a very serious accusation. To state the case—it is one of bad and corrupt conduct; but we shall hope hereafter to show when it shall be scanned critically, that there is really upon the face of this accusation no

direct charge of crime; that there is in fact no charge which conveys necessarily any imputation upon the respondent, except that it may be embraced in the words charging that he "pretended collusively with the said William Sanderson, to pay him, the said William Sanderson" the sum of money which he had borrowed; but which in fact was not received by Sanderson, and which was left in the room of the respondent and was kept by him.

We shall expect to satisfy the Court, or in fact the Court is already satisfied from the testimony from the prosecution itself, that this settlement of the matter of the due bill given upon the loan of the money, was not made under the fear of proceedings on the part of the Assembly; nor made in fact while these proceedings were pending, as is herein alleged.

That fact satisfactorily appears from the testimony of Sanderson. The whole of that transaction resolves itself, in my judgment, into simply this, that Sanderson feeling grateful at the result of a case in which he was deeply interested, and by which result he had been relieved by a pecuniary liability of a large amount—had been saved, in fact, from bankruptcy—wished, in the generosity of his heart to bestow some evidence of his gratitude upon the Judge, through whose instrumentality he had received so great a benefit; that this desire which he has testified to before you, was anticipated by an application on the part of the respondent, for a loan of money; that instead of communicating then, his real intentions, he permitted him to receive the money as a loan; that afterwards, if not at the time, he did intend to carry out the feeling which he originally cherished, by making this loan a gift; that at the first suggestion of such a desire to the respondent, the idea was repudiated; that Sanderson determined in some way to convert it into a gift, without his knowledge; and that he persevered in that determination to the last. It is claimed here distinctly, on the part of the prosecution, that this article contains a direct unmistakable charge of bribery, and I hold the counsel to that which is claimed. This is customary and proper in all judicial proceedings. The claim set up, and that is the claim which must be made out, is, that this article discloses what in law is pronounced to be a bribe. If so, I am at a loss to know how. With a view to remove entirely any question as to any corrupt, intent, either of bribery or improper influence so far as the respondent is concerned—although we do not admit it necessary, we shall undertake to show that, before the interview between Sanderson and the respondent, to another gentleman, for reasons which will appear, the respondent had communicated the fact that he had examined the testimony in that case; that he had made up his mind how to decide it; and that this transpired some two days before the first interview between Sanderson and the respondent, when the loan was proposed. It has been in testimony that the Judge had already communicated to Sanderson the result to which he had arrived. Lest it might be a matter of imputation against the Judge, and this be taken to be a corrupt loan of money, we have thought it best to prove to you the fact I have just mentioned. We shall further prove to you, deeming it best that you should understand something of the nature of the case, and of the propriety of the decision made—we shall farther place before you, so far as we are able to by the testimony of those who were present at the trial of that cause, the nature of that trial and the circumstances attending it, that you may be able to ascertain and know to a certainty that no honest Judge, no intelligent Judge, no Judge who meant to decide acase not upon improper influences and according to law, could have given a different decision.

The second Article is, that the said Levi Hubbell, &c. (Mr. Arnold read the article.) Under this article there are three specifications. The first is in regard to the transaction in the matter of the judgment of Jonathan Taylor, about which so much evidence has been introduced here before you. We shall be able to show you the true state of this case. I need not call to your minds, in detail, I suppose, the testimony that has been introduced here. It shows a judgment recovered in the Racine county Circuit Court, rendered by Judge Whiton, on which an execution was issued by the defendant, Judge Hubbell, made returnable on a certain day, and thereupon a bill was filed and an injunction was granted against the city. That injunction was subsequently modified; an assignment of the judgment was made to Mr. Blossom, to whom a bond was issued for it of $1,200. That bond was subsequently in the possession of Henry P. Hubbell, but it had been re-assigned by Mr. Blossom to him; and it was by him negociated, and he received the proceeds of the sale of the bond.

Now, I do not, and will not, undertake to dispute the fact that is here in proof—that Judge Hubbell was interested in that judgment, that he was interested in it at the time it was issued by Taylor, and that he was interested in the bond issued upon it subsequent to its re-transfer by Mr. Blossom, and at the time of its negociation; but we shall contend before you, and shall be able to show you, by proof not to be questioned, that at the time when the proceedings in chancery were pending, when the respondent made the order modifying the injunction—for he did not grant it, it was granted by another officer at the time—that judgment was absolutely and *bona fide* the property of Levi Blossom; that it had been assigned to him by Levi Hubbell in good faith, absolutely, and for a valuable consideration; that this suit was instituted by Mr. Blossom, by his own attorney, whom he paid for his services; that it was not until subsequently that the judgment on the bond was re-transferred by Blossom H. P. Hubbell, and thence undoubtedly to the respondent; and that at any time when he exercised any ownership or control over the bond, he did not entertain any judicial proceedings, nor make any judicial decision in regard to it.

The second specification is in regard to Humble's note, which was sued to by Mr. Graham in his name, and which was recovered in the Circuit Court of Milwaukee county. This was a suit in which Finch & Lynde appeared as attorneys for the defendant, and contemplated a defence on the strength of some instructions received from the defendant; and contemplating such defence, they filed a motion to dismiss or set aside a sheriff's return, for some inaccuracy; the plaintiff filing a motion at the same time to amend the sheriff's return. When it was called, the attorney for the defendant withdrew his appearance; the Judge, however, having first said that he was interested in that matter, and should be compelled to send it away. The counsel for the defence stated that that was unnecessary, as he intended to withdraw. He did so withdraw, and judgment was taken by default.

The charge is, that the Judge decided this cause, in which he was pecuniarily interested. The eleventh section of the act of the Revised Statutes, in reference to the election of Judges, provides—"In case the Judge of the Circuit Court shall be interested in any cause or causes pending in said Court, or shall have acted as attorney, solicitor, or counsel for either of the parties thereto, the said Judge shall not have power to hear and determine such cause or causes, except by consent in writing of the parties thereto."

In this connection and under this provision of law will arise this question, what is the fair interpretation of that provision of the statute? Does it mean absolutely to prohibit the Judge of the Circuit Court from entering up a mere order or judgment in form, or does it mean something more? Does it mean to say that where a judge has been in a cause or the merits of it, or has been of counsel, that he shall not sit in that cause and decide upon its merits? Does it not assume, or is it not based upon the idea of controverted rights, not to prohibit him from acting in mere matter of form in carrying on the mere machinery of his Court, and from entering a judgment upon default, which is a mere matter of form, where nobody is interested against him, and where there is no disputed right to be passed upon? I had supposed that such was not designed to be the scope of the law. The Judge has the right to have a promissory note as any other man has. He has the same right to sue it—to get judgment upon it and to issue an execution; and where there is no controversy; where there is no dispute; no question of fact to be passed upon, why shall it be driven abroad, driven to another district, barely for the purpose of using the machinery of the Court to obtain a judgment? It is not to be disputed, I suppose, that he should not sit and pass upon a case where there is a controversy of fact.

Now, if a suit may be instituted by him, the question is whether he has not the right of using the authority and power of the Court, for the purpose of obtaining his right. It is a matter of form, and therefore he may sue in the Court, over which he presides, and if that be a reason, and if that reason continues good, why may it not be carried there? If there be no controversy, no defence, why may he not, by the same machinery, have the same right on summons? It seems to me there is reason in this distinction.

The third specification grows out of the same transaction. After the property had been bidden off, upon execution issued upon the judgment of Graham by Henry P. Hubbell, and the execution satisfied, a mortgage of the defendant, Humble—Mr. Downer, holding a prior mortgage—instituted a suit by foreclosure, with a view to collect his debt, and as is usual on such occasions, he made other parties who were interested either as judgment creditors, or subsequent mortgagees, parties with them to foreclose; and in this case the complainant made Mr. Downer a party, who was an assignee of a judgment, I believe, which was subsequent to this prior mortgage, and also Mr. Graham, who represented the judgment, which had been rendered upon this promissory note. A decree of foreclosure was taken in the usual form.

There was no dispute, no controversy, even no resistance; Graham did not even appear. Downer only appeared, with a view of obtaining such a decree as would authorize him to sell and obtain the payment, not only of the mortgage, but also of his subsequent judgment. It was a decree taken entirely by consent, and arranged between Mr. Downer, and Messrs. Finch & Lynde. There isno appearance on the part of Graham, nor Henry P. Hubbell, who was entitled to bid in the property, on execution at law. You have had detailed to you the whole of that proceeding. It appears to have been gotten up by consent, a mere order of form, almost like the orders authorized by the statute, which may be entered up by attorneys, even without a Court; and I call attention to the fact that formerly the incidental orders occurring in the course of chancery proceedings, were required to be made by the Court, or Judge; but

for purposes of convenience a statute was passed, authorizing solicitors to go into the clerk's office, and enter them up as a matter of course. It was purely using the machinery of the Court, for the purpose of accomplishing an object in which so many were interested; and that it operates beneficially to all parties concerned, no one disputes. Then shall it be said that the Judge acted corruptly, because, at the end of the proceedings of that term, after some twelve days of severe judicial labor—is it to be said that he acted corruptly, because he granted this decree, when he had this remote and contingent interest, and would not, on account of it, send it to another Court, and compel Finch & Lynde, and Mr. Downer, to travel there for the purpose of obtaining those orders, which would enable them to sell the property, and get their debts satisfied? It seems to me, this is a far fetched ground of corruption, to allege against the respondent. Every thing was fair about the sale, and all the proceedings were regular. They were in the usual form and nobody was dissatisfied. Every witness has testified that every proceeding was according to the usual course. That the property sold for all that it was worth, for all that Mr. Downer would have been willing to give for it, and a little more; and it turns out, at last, upon full proof, that out of $1200, the property sold for, there was enough left after satisfying Downer, to pay the monstrous sum of $90, to Henry P. Hubbell, or in other words to the respondent if you please, to the satisfaction of a judgment of some $300.

The third article is in regard to the Haney case. I will not read it. To that I have to say, that if the respondent is not impeachable for acts done during the term of office that expired in 1851. Then that disposes of that article. We have to say again, that upon the proof in the case, it appears to have been an act done under such circumstances as actually and necessarily to preclude the idea of any corruption; and I ask the learned counsel to lay his finger upon one single instance, I care not however slight it may be, which authorizes the inference in the most suspicious mind that the conduct of the respondent at the bar in that case, was dictated by corruption. There was no wrong in it. It was a matter publicly talked about at the time. It was admitted to be a hard verdict by the jury. It was desired by even the prosecution and the District Attorney, that if possible, the defendant should escape with less than the sentence that the law pronounced. We shall contend in the next place and lastly, that upon an examination of that indictment, which we shall produce before the Court, the Judge in the disposition of that case, pursued the only course that he was authorized by the laws of Wisconsin to pursue; and that, notwithstanding all the clamor that has been raised in the community, if he had pursued any other course than that which he did pursue, he would then have been subject to the accusation of misconduct in office. This conduct cannot be made lucid or clear now, without the indictment before us, but I will state the proposition now, because I see some here who will appreciate the point as I shall state it. The law provides that where a person being armed with a dangerous weapon, shall make an assault upon a person with an intent to rob or murder, that he shall be punishable by fine or imprisonment. There is another and a subsequent section which provides:

"If any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be punished by imprisonment in the State Prison, not more than five years nor less than one year."

The 45th section provides: "If any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein prescribed, he shall be punished by imprisonment in the State Prison, not more than three years nor less than six months; or by fine, not exceeding one thousand dollars nor less than one hundred dollars."

Now, the language of this indictment in substance is this: it charges the defendant, Haney, with having, on a certain day and place, made an assault upon a certain individual, and being then and there armed with a dangerous weapon, to wit, a gun, did, &c.

That is the language of the indictment. I question as a lawyer—and I am not afraid to stake upon it what little reputation I have—I question whether that defendant could have been convicted legally upon that indictment, of anything but assault. The language of that indictment is, that at a certain time and place, he made an assault upon A. B., being armed with a dangerous weapon; not that being armed with a dangerous weapon he made the assault, but that he made the assault being armed.

The charge of the indictment is, in my judgment, simply an assault; but if you connect that allegation with another, it would be an allegation with intent to commit murder, and that is punishable by imprisonment or by fine; but more of that hereafter. I apprehend that the District Attorney, who drafted that indictment, may possibly have followed the form found in Archbold's Criminal Proceedings, and thus have overlooked the peculiar language of our statute, which, in order to fix imprisonment as the punishment, requires that the criminal, being armed with a dangerous weapon, made the assault. I am informed that a motion was made for arrest of judgment upon that very ground; and upon the argument of it, the Judge of the First Circuit, held that it was good and well taken.

Article four, sets forth that the said Levi Hubbell, &c. (read the Article.)

The first specification under this charge is, the celebrated case of Calvin W. Howe and others, against Kane and Cogswell. In regard to that, I do not intend to pause here to review the testimony, its character or tendency; but I will barely call the attention of the Court to one prominent fact, which is most fully in proof, and that is, that the respondent scrupulously forbore to sit in judgment in that case, so long as the defendant Cogswell was a party; but after the case was disposed of as to him, and it became an issue between him and Kane, then he did sit.

Now, if the Court shall be satisfied of that fact, it will relieve him from any imputation even of technical violation of the law; and I have only to inform you now, that it will so appear by indubitable proof, which we shall offer. It will appear that the respondent had been of counsel for Cogswell, and for him only; and on that point, you will bear in mind the testimony of Judge Whiton, which will of itself, if you believe it, establish the fact that the respondent intended nothing wrong—because he had refused to sit, up to a certain time, and when he did sit, he assigned as a reason that since Cogswell was no longer a party for whom he had been of counsel, he was therefore at liberty to sit. Indeed, it will further appear, if it shall be admitted in evidence, that the the distinguished counsel for the Managers, whose opinion as a lawyer is valuable in every thing and every where, who was counsel for the defendant,

Kane, did urge upon the Judge the imperative duty he was under, to sit upon that case, and assigned reasons which did call most loudly, if it was possible for him to do so, to take part in the trial of that case. Upon this subject the testimony will be unequivocal.

The second specification of this Article instances the Hungerford case in support of the charge. Upon that subject there is no proof, with the single exception of the admission made by my associate, that the respondent was retained in the matter of the indictment for perjury. The argument will be in that case, that there was no connection between the suit in chancery and the indictment pending in the United States Court; that there was no similarity between them; and the retainer was limited to the motion that was then pending upon the indictment. Upon this subject you will probably have occasion to hear nothing from me, and for a reason that I will frankly state.

I have been counsel for Mr. Cushing in the proceedings that have been pending for a considerable time, my associate having been counsel for Hungerford throughout. I shall leave whatever may be said in that case to him.

The next specification is the Hart case—the case of divorce—the circumstances relating to which, you have learned in the testimony of Mr. Albert Smith. I will not now pause to examine and comment upon the various circumstances which occur to my mind in regard to that testimony. To the force of this charge, I present one single point which is sufficient to dispose of it, so far as it is pointed to the respondent; at most, the respondent had been employed only to draw a petition for the divorce. The subject had been before Judge Irwin, and the papers were returned. Mr. Hubbell was then elected Judge. Mr. had just come to Milwaukee with a good reputation, but reduced in means, as we will show; and the Judge, with a view to assist him, passed over this case to him. Now the bare passing it over to Mr. Smith, showed a desire to be rid of it himself. There never had been up to the time of the commencement of the Smith case by Smith, a record of any such suit pending; and the papers show that they never had been filed, and no suit had been pending. As to whether the Judge had been paid, I take to be an immaterial matter; but it will appear in proof, that the administrator of the Hart estate, who is the brother of the deceased, although he has found the receipts of Mr. White and the various officers in the case, has been utterly unable to find any receipt of Judge Hubbell, but the fact that no suit had been pending, in which Judge Hubbell had acted as counsel, the fact that he had been settled with, if that fact shall appear, the fact that he did turn over this case to Mr. Smith, the fact that this testimony had been fairly taken, according to the desire of the wife—all that goes to preclude the idea of any intentional violation of law. If it was a violation of what was prohibited by law, it was thoughtless and accidental, and could have been for no bad purpose; because what bad purpose is demonstrated here, or even pointed to, or hinted at? None whatever. It does not appear that he was to be benefitted in the least. It does not appear that he was paid for it. It does not appear that the divorce was resisted. It does not apppear that the decree was improvidently granted, unless the failure to print the notice shows bad conduct. Yet I apprehend that will appear of little avail; for the practice has been at the bar, to file those proofs, if the fact existed, that the legal form of proof should be on file at the moment.

The fourth Specification relates to the case of Andrew Smith against the

Milwaukee Mutual Insurance Company. I will not dwell upon that case at all, because I suppose the proof of the witness upon the stand entirely exonerates the Judge from any thing wrong in that case.

The fifth and sixth Specifications charge the respondent with adjudicating upon certain indictments that were pending in Milwaukee county against Charles I. Kane, and charge that he did thus adjudicate upon them, after he had been employed as counsel in certain proceedings in which Cane was a party, and out of which the indictment for perjury grew. Well, as in the other case, I shall expect to show that he was not an attorney for Kane, but for Cogswell alone, and to preclude any idea of corrupt conduct or intention on the part of the Judge, I think it would not be very difficult for me to prove that that was a matter of some conversation at the time, and that it was the almost unanimous opinion of the counsel on both sides, including Mr. James, and another gentleman whom I have the honor to see before me, (Mr. Ryan,) that the Judge had an unquestionable right to sit. I will add myself to the category, if it is of any consequence, for I was myself retained. In that case it is sufficient to satisfy the Court, to show that the Judge had the legal right to sit.

The fifth Article charges as follows, (Article read.) The first Specification is the case of McBride & Sheldon against the Comstocks, Sanderson and Chase. The details of that transaction have been given you by Mr. McArthur. It seems to have been a prooceeding gotten up out of the Court entirely for the accommodation of Mr. McArthur and the Sheriff; and the Judge—as Judge—received the proceeds of the sale entirely for their accommodation, and afterwards, when the usual order was obtained for paying it over, it was at once forthcoming. I am not aware of any proof that maintains even an insinuation against the Judge in the matter.

The second Specification is the case of Vilas against Lansing; about which you have the evidence of Messrs. Collins, Vilas, Burdick, and George B. Smith, all of them showing that the money received by the Judge as a matter of accommodation, partly to the complainant, and partly perhaps for himself. So far as that is concerned, however, there is no proof; but when a question arose in Court about paying interest, he proposed to take it himself and pay interest —and did so openly, nobody doubting or saying that there was any thing improper in it. Afterwards, when the money was to be paid, it was paid; and it is in proof that the suit was hurried forward by him, instead of his showing a desire to continue the suit along to keep the money until he should make a decision. His letter to Mr. Catlin shows that he had the money at hand, and that he then instantly paid it over by his check. I do think if there is any one thing in this whole tranaction that is a mark of honesty, it is that letter written by Judge Hubbell to Mr. Collins about the matter of interest.

The next case is the third Specification, about which no proof has been given here. It relates to fines against some members of the press for cracking up certain lottery schemes, and for which I am assured the respondent never did receive the money or the prosecution would have furnished the proof upon that subject.

We now come to the sixth Article. The first specification is the transaction disclosed to you, the other day between Mr. Mitchell and the Judge, in regard to proceedings instituted by the Attorney General against the Wisconsin Marine & Fire Insurance Company.

The charge is, "improperly and collusively giving judicial advice and making judicial promises. Well, now I suppose, and I use it in illustration of the great point which I had argued this morning, that it is not only necessary to maintain this allegation necessary to prove advice, or to prove promises, but to prove further that the advice was improperly and collusively given, and that the advice was given in some corrupt manner. But how they have seen fit—and their own common sense has taught them the necessity—to aver a motive, because to have averrod that Judge Hubbell had made judicial promises and given judicial advice, would not have been sufficient for their purposes, and they are compelled to charge that this has been improperly done. But where is the proof? Who has sworn to it? It is in proof that application was made in Waukesha, for an injunction against the company; but it was refused till time could be given that Corporation for a hearing. Every lawyer knows that to be a rule of Court. Corporations are not usually enjoined until notice has been served upon them to prepare for the injunction; and our rules have gone to the extent of prohibiting the Judge from granting an injunction in any case without notice. Well, what was the result? Was there anything wrong in that? Was there any injustice done to the individual or to the public? Would any member of this Court have had the Judge then at Waukesha, secretly, without any knowledge on the part of the company or on the part of the public, grant an injunction which would have worked such disastrous ruin to the defendants and to the public, saying nothing of the Corporation, as such an injunction would have done at that day. Well, they applied to Judge Larrabee, and notice was given of an injunction, and counsel for the Corporation and among them the learned counsel for the Managers, appeared and resisted the application; on what grounds I know not; but mainly, I believe for want of jurisdiction. Then as the Judge was coming to Madison, it became important for Mr. Mitchell to understand what remedy he could have in case the injunction should be allowed. His counsel advised him to regard it as a nullity—to disobey it and set it at nought.

Judge Hubbell, however, advised him to obey it, and get his remedy in a legal way. And now, sir, I wish to ask which stands best upon the proof and the record, the Judge who advised obedience to the injunction until it could be dissolved, or the counsel who advised disobedience? Every lawyer knows it is a well settled principle, that it is better to obey an injunction, even if it has been improperly issued, than to disobey it. The Judge advised obedience and agreed that upon being telegraphed, he would return for the purpose of listeningto a motion to dissolve the injunction. Well that whole matter had been before him.—The bill had been submitted to him. The jurisdiction, or want of jurisdiction of Judge Larrabee, was already familiar to him.

He assured Mr. Mitchell, not so much for his interest and those of the Corporation, as to save the public from the disastrous ruin that would follow the shutting up of that concern, that he would speedily repair to Milwaukee, agreeing to ride night and day if necessary, such was his devotion to the interest of his suitors and the public, and hear a motion to dissolve that injunction. But it is charged that Mr. Mitchell understood from the language of Judge Hubbell, that the opinion of the Court could not be sustained. Was this done for pay! Was it done on any promise of money or favor, on account of any reward of cash or credit? To all questioning upon this point, No! No! was the invaria-

ble answer of Mr. Mitchell. For what then shall the Judge be denounced in this transaction? For a mistake in this matter? For making promises to do his duty, even to travel day and night without pay or reward to do it? I do not think that is official conduct, nor corrupt conduct in office. But that is all that the testimony shows against the respondent at the bar.

The next Specification is in regard tothe judgment procured by John Lowry & Co., against Doctor Greves and Abel W. Wright, and charges him with listening to a statement of Doctor Greves, and advising him to make a motion to vacate a judgment standing against him, which Doctor Greves did. Well, conceding all this to be true, I am at a loss to discover any impeachable matter in it. Suppose the Judge did listen to Doctor Greves' complaints, and suppose he did tell him it was scandalous, and that he would not stand it, and that upon that advice the Doctor did move to vacate the judgment. Has there been any proof offered to show that that was not perfectly proper? I have seen no such proof. To be sure, I have heard of a witness, for I was not present, standing up here and stating that the grievance complained of to the Judge was false.

Judge HUBBELL. That was not under oath—it was a speech on his own account.

Mr. ARNOLD. Well then, I have heard of a speech in which a gentleman has charged, that the Doctor's "oath was a tissue of falsehood from beginning to end, and that he was a perjured villain, and he had not courage enough to resent the insult." You have the account of it from Doctor Greves, how it all took place. It was a casual meeting in public, just before the judicial election, where conversation was carried on upon the subject of the election, where parties were discussing the merits of the candidates and the various stories that were afloat concerning them, and telling respectively how they should vote. Doctor Greves gave as a reason why he should not vote for the antagonist of Judge Hubbell, that he had pursued a certain course with him, had dealt unfairly by him, had practised a series of frauds upon him, which resulted in getting a judgment against him, to the amount of some $2,200. Upon that statement the Judge expressed his opinion, and asked the Doctor if he was going to let the matter rest where it was, and suggested the idea of a motion to vacate the judgment, a thing perfectly well known to every lawyer, to be within the jurisdiction of the Court. The Doctor replied that he wanted a lawyer not devoted to the interests of Mr. Finch. The Judge very frankly assured him that that objection did not lie against the very able counsel who here represents the Managers, and I believe, upon application to him, he did draw up the the very affidavit, which he has taken pains to introduce here, and read, although utterly irrelevant to the charge at issue. For what purpose it has been introduced here, I know not, and care not. I see nothing in the facts disclosed, in regard to that transaction, that cast any imputation upon the character or honor, in any respect, of the respondent.

The next specification is in regard to Burr S. Craft, in reference to a complaint on his behalf, against his wife, for the purpose of obtaining a divorce, which was granted, and the substance of the charge is some improper interview with Andrew E. Elmore, in which the Judge suggested that an application for divorce, and after hearing the grounds for the divorce, expressed an opinion that they were sufficient to obtain the divorce; afterwards when the proofs were taken they were submitted by Mr. Elmore to the Judge in private; the

Judge expressed the opinion that in the absence of any opposing proof, they were sufficient; and that he granted the divorce. Supposing that these statements are all true. I see nothing in them impeachable. If it be impeachable conduct, when a friend in a social way, relates a given state of facts, to express the opinion that those facts if true and unopposed, are grounds for such an application, or such a proceeding, then any Judge almost may be impeached. There are few men who would so place themselves upon their dignity as to refuse to converse, particularly w th their intimate friends, upon a matter so excusable as that. That was making no promises; it was barely saying what a lawyer says every day in advice with his friends—if your facts are so, I think they are grounds for maintaining such and such action in Court. The Judge promised nothing. It was only a conversation between the Judge and Elmore and myself, for I believe my name was drawn into the controversy, in regard to the contemplated application for a divorce.

It came up casually, in a public house, connected with an incidental remark that Craft was going or had gone to California, on account of difficulties with his wife, and because no divorce could be obtained in the judicial district where he lived, an application having been made to that effect and having been refused on some idea of discovered collusion.

I know myself, that when I came to ascertain the facts disclosed in that bill I was surprised to find that any lawyer had entertained a doubt that if the proofs were true, they were sufficient to authorize a divorce; nor is there a question raised here that the decree was not properly granted, that the evidence taken was not perfectly sufficient to warrant it. What impropriety then appears in this transaction? The testimony had been taken by Mr. Elmore. He had been up north to get the statement of a certain witness, but for absence or some other reason, he failed to get it, and he wished to know if more testimony was needed, and if it was still necessary to follow up that witness. Upon his application, the Judge did open the testimony and did examine it.

What impropriety was there in that?—He examined it to see if it was sufficient and if it would relieve Elmore from going again to Appleton. The Judge said it was palpably sufficient, and you will see if you will read the bill, that without any opposition, it is sufficient to grant half a dozen divorces.

Article seven charges that the said Levi Hubbell, &c. (Article read.)

Specification one, alludes to the suit of Baasen against Anderson, and charges the Judge with conducting himself with undue and unjust partiality and favor to a particular suitor. Now, if there is any thing in the charge, I suppose it is prohibited either by conscience or prohibited by statute.

What does the proof disclose? why, that these was a sale of property upon a foreclosure to Kilbourn; that Sawyer made an arrangement with Kilbourn to become the lessee; that he was in a hurry to accomplish it, so that he could come into possession of the property; that an application was made by Mr. Mariner, for Mr. Kilbourn, to hold a special term to confirm that decree of sale; that the Judge said he did not feel under any obligation to go down to Court to hold a special term for the accommodation of Mr. Kilbourn; that those who were his worst enemies were asking him for the most favors; that Mr. Kilbourn had seen fit to abuse him, and had run out against the Jenny Lind Club; and that he might as well abuse a singing school. After this refusal, it is charged that Mr. Sawyer, who was a friend of Judge Hubbell, went and told him the circum-

stances of the case, and the peculiar situation of the sale, and that thereupon the Judge consented to hold a special term to confirm the sale. Now, it is here in proof, that it was the habit of the Judge in passing down town every day, of stop at the court house for the transaction to such business as might come before him, and that he did go down and hold the special term, and confirm the sale. That is the proof. Now what is the corrupt conduct? I want to know if any lawyer here, or any man in this Court who has ever been upon the bench, or any of the thousands of intelligent citizens who compose his circuit, will maintain he was obliged to leave his house at any moment, to open a special term to confirm a sale upon the request of whoever might apply. I have not known that that was within the duties of a Judge. I do not see any difference in the obligation, because Mr. Kilbourn happened to have been an enemy. I think it makes no difference, except that it here discloses the fact, that the Judge did not feel disposed to put himself at personal inconvenience for the purpose of accommodating an open and well-known foe. It was, therefore, at his discretion, whether or not to do it for an enemy or a friend; but when appealed to by a friend, his earnest desire to accommodate, prompted him to do it. There was no obligation in either case. In the one case, he refused an enemy, because he had a right to do it—in the other, he granted the favor, because he had the right to gratify a friend. The next case is that of the indictment against Howe, for the crime of perjury. Now what is the proof of that charge? In regard to bringing about the acquittal, there is not the slightest proof. The record shows that the jury was sworn, that the proof was submitted, that the verdict of the jury was not guilty. The prosecution was at liberty to enter a *nolle pros.* if they saw fit to get one up. Now, it has not been explained here, how that indictment passed off. I suppose the prosecution have thought it no object to advance any proof upon that subject. It is a matter with which I am perfectly familiar, having been counsel in the case, and also in the case in which Howe was a witness, and out of which the indictment grew. If the learned counsel will offer a witness, who knows, I shall be most happy to have explained to this Court, how that indictment did pass off, and how far his honor the Judge, brought it about. Then there is no proof upon that subject that I am aware of.

The balance of the charge is the indecent conduct with the wife of William H. Howe, wherein she solicited him on behalf of her husband, to bring about his acquittal. Upon that subject you have the testimony of Mr. Finch. He says that he went to Waukesha on a certain day, asked Mr. Holliday for the use of the room, to do some writing in for a short time; as he opened the door, he found Mrs. Howe and the respondent in the room; Mrs. Howe was sitting on the bed, and the bed looked as if somebody else had been sitting by her side. The Judge spoke to him, asked him to come in; he declined and retired, and that is all he knows about it. I believe that is the substance of the testimony. Now, where is the proof of the indecent interview and where is the proof of it to solicit the respondent in his official capacity, to interfere for her husband in that matter of the pending indictment? There is not one word of proof from any one witness that I can now call to mind, upon the gist of the accusation, to wit: that that interview was personally indecent, and prostituted to the purpose of destroying the effect of the indictment, then pending in Court. But we shall show you by Mrs. Howe herself, all the circumstances of that interview,

and we shall be able to show you another illustration, of how treacherous and unreliable is the human memory. Here is a matter to which Mr. Finch has had his attention called from time to time. It is of such a nature as to impress itself strongly upon his mind, and yet for all this time, he has labored under an error. He is completely mistaken from beginning to end. We can prove this, and shall prove it; not alone by Mrs. Howe, but by other witnesses, personally acquainted with the facts, for it happened by a mistake of my friend Holliday's, to have been in my room instead of Holliday's, that the interview took place. It was in November of that year, and pending the session of the Waukesha Circuit Court. The object of that interview on the part of Mrs. Howe, was to consult him in relation to a verdict which had been rendered in a suit, wherein a Mr. Simpson was plaintiff and her husband defendant—a simple action on account, I think. In charging the jury in that case, the Judge had labored under a mistake of fact, about an endorsement upon the back of a note, which was in controversy; and as Judge Hubbell had in his professional capacity, before he went upon the bench, advised and directed that endorsement, Mrs. Howe sought that interview, for the purpose of calling that fact to his mind, with the view of getting a new trial. We shall show the Court that that was the sole and only object of the interview, and subject of conversation, and that the Judge assured her—and if the gentleman wishes it he shall hear more proof—the Judge assured her that if the facts were as she presented them, they entitled her husband to a new trial. It will be shown that I appeared personally upon that tral. It will further appear that the indictment for perjury in relation to which this conversation is alleged to have been held and the solicitation made, was a thing just found by that term of the Court, and on that day, the defendant had not been apprised of it, and had not been arrested. Well, I take it that that will pretty effectually dispose of that Specification. We shall show that.

The third specification of this article, is in regard to the divorce case of W. W. Wyman from his wife. On that subject you have had the testimony of Mr. Wyman, and taking it all for true, with his imperfect memory and loose statements, there is nothing in it that compromises the character of the Judge. It appears that some affidavits had been drawn up and handed by Mr. Catlin to the Judge, and that he very frankly stated that a divorce could not be granted upon them. It was very easy for the Judge in reading them over, if they did not come up to the requirements of the law, to just say so. It appears subsequently that an appointment was made for him, and he was invited to the house of Mr. Seymour, where Mrs. Wyman was boarding. He called according to the invitation; but as to any indecent interview, there is no proof whatever upon the subject, excepting loose, unsatisfactory and utterly unreliable testimony of Mr. Albert C. Ingham. Those who recollect the manner of his testimony, and the complete mistification and uncertainty of the recollection he had of any thing pertaining to the interview, will attach but very little importance to it; and taking it all for true, that the Judge did call there; that the matter was made a subject of banter the next morning at the breakfast table; that Seymour remarked that it was best not to say any thing about it, and as he thinks, as he had an indistinct memory, that the Judge when he met him, said to him, that since he, the Judge, had a great many enemies, he, Ingham, had better say nothing about the interview. We shall show you by Mr. and

Mrs. Atwood, and by Mr. Seymour, all that transpired. It then will be left for you to say, whether that proof leaves any doubt about the perfect propriety of that interview; and as to any collusion that there was none to the knowledge of the Court at the time of making the decree.

The next specification relates to the suit of Barker against Pratt. Well, I really do not know what to say to that specification; and yet I am perfectly familiar with all the facts. I do not see that there is any thing in it even from the testimony of Downer. Testimony was introduced in that case from Vermont, as to the validity or invalidity of a certain judgment After a while the Judge granted a judgment in the case, saying at the same time, that he should have to stay the execution of the judgment. He did grant such an order staying proceedings, and continued that order at another term. Well, the substance of it is, that after a while, Brother Downer got annoyed and angry because he could not have his judgment, and get his execution and obtain the money. So he took another tack. There was a judgment in the first place in Vermont. He then brought a suit in the United States Court with two counts in his declaration. I suppose he thought that Judge Miller, who has the reputation of holding a plaintiff's court, would do the right thing by him and that he had a sure shot that time; but the fact is, that Judge Miller has done precisely what Judge Hubbell did before him. Now these are plain facts which will be made to appear.

The seventh Specification is the case of Hopkins against Stevens, in an action of replevin in regard to some property that had been kept a long time in a store house. And the charge is, that the Judge, "partially and unfairly, attempted to prevent the counsel for the plaintiff adhering to an admission of fact made by such counsel, and from making the same." Now the testimony is very conflicting. Mr. Orton, Mr. Chandler, and Mr. Watkins, differ as to the time of making the admission, or preventing it to be made. The language stated by them to have been made use of is, that the Judge said, "I shall not allow you to make that admission; if you do you will lose your case," or words to that effect. Now, Mr. Watkins gives you an entirely different account of that affair.

Mr. Watkins states that when the attention of the Court was called to the admission made by Mr. Watkins, the Judge said he did recollect that such admission had been made, and if it was made it might defeat the plaintiff's case.

Mr. Watkins still insisted upon his admission, contending that the tender having been accepted, extinguished the defendant's claim. This legal proposition had, inadvertently, not occurred to the mind of the Judge at the moment. The case went on, and the plaintiff recovered. Now, the language as testified to here by Messrs. Orton and Chandler is, to my mind, improbable. It does not sound like Judge Hubbell, that he should say, "I cannot permit you to make that admission. If you do, you will lose your cause." If that is so, I am surprised that there is not some other proof, some promise, or something to account for his making use of this most extraordinary language; but if the language stated by Mr. Watkins be the true rendering of what he did say, why then, it is natural and probable saying, "Do you make that admission?" and "if you do, won't you lose your case." But Mr. Watkins was sly, and knew what he was about. He relied upon the technical legal rule that the plaintiff having accepted the money tendered, was bound by what he had accepted. The Judge did not perceive the drift of Mr. Watkins; but when he came to understand it he gave it up.

The charge of the next Specification is, that of refusing adequate time for the argument in the case of Hungerford against Cushing. I will not stop to remark on this case further, than to set forth the fact disclosed by Mr. Smith, that he was here with others with a view to dispose of that case; that after staying here a while, they got the idea that the case was not to be argued, and Mr. Smith went away. The Judge, then, telegraphed him that he must return and argue the cause; that then the Supreme Court had closed; that the Judge, after being here a long time, did not feel disposed to open a special term in the summer; that he told Mr. Smith he could not give him more than an hour to argue the case. Was that arbitrarily and partially refusing the counsel adequate time for argument? It might, perchance, have been granted. At any rate, the refusal amounts to nothing more than this—I have been here six weeks holding Supreme Court. I cannot hold a special term for a long cause in the heat of summer. If you want to make a long argument of an hour or two well and good, otherwise it must be postponed; and, indeed, Mr. Smith does not seem to have felt very bad about it. He stipulated immediately to submit the case without argument. His idea was, that it must go to the Supreme Court at any rate; and I am apprised farther, that we shall be able to show, that the only conversation he had with the Judge upon that subject, was in this building with other counsel, and that Mr. Smith must have forgot in regard to the subject of other conversations. I see nothing arbitrary or partial in this refusal.

It was simply saying, not that I won't continue your case and allow you time for argument; but it was saying, I cannot continue to hold Court longer than an hour or two, and that I think is long enough. I may say also in passing, that the obvious point was, that the proper parties were not before the Court, and that Mr. Smith could have presented in half an hour as well as in a day, all that there really was to be said on his side of the case.

Article eight charges the said Levi Hubbell, &c. I shall pass that article, because I am not aware that any testimony has been adduced here to substantiate any one of the Specifications under it. On this article there is a total failure of proof. I suppose it to be abandoned. I know a feeble attempt was made here the other day, through the testimony of Doctor Greves, and of Mr. Randall, to show something in regard to an interview between the Judge and Mrs. Pope, one of the females named in the Specification; but so far from showing any thing that substantiates the charge, I contend that it is scarcely worthy to be alluded to, and that proof, so far as Doctor Greves is concerned, was entirely a failure. He could only testify to the arrangement that was made with her, and for her to meet Judge Hubbell. He could only testify that he went to her house to go with her, but she was gone, and something was attempted to be shown with regard to her appearance; but that was rejected. The only testimony that remains was that of Mr. Randall, concerning what was related to him by the respondent himself. Hard indeed is it for the respondent if he is to be convicted of debauchery upon his own account of a transaction, that in an interview that has not been proved to have taken place. Why taking that fact as stated by Mr. Randall, it is the strongest and best of evidence, in favor of the respondent, since it was of so little importance, that he communicated it openly to Mr. Randall. Certainly there could have been nothing in it criminal, as is implied in this charge. This article is then in fact abandoned. It would seem strange that the prosecution having spread these accusations upon the record, should have utterly

failed to substantiate a single one of them. They have been spread broad cast over this State, and over this land. They have been read by the men, women, and children of our country. If they are not true, they are most outrageously libelous. I suppose the prosecution may be sheltered behind their privileges and official duties; but it is hard, indeed, for the respondent, who can see how his fair name may have suffered in female estimation, upon the strength of these accusations, spread far and wide throughout our land; for it is not to be supposed that so grave and honorable a body, as the Assembly of the State of Wisconsin, have made such foul charges against a citizen of the State, unless there was evidence before them, to substantiate and prove fully the charge. And let me say no such charge should have been made, either in conversation or in print, unless they were to be perfectly and completely substantiated. We have been refused access to the evidence pertaining to this branch of the charges taken before the Committee, but I am given to understand that no proof came out before the Committee, establishing the truth of any of these Specifications against the respondent at bar. The best proof of that is in the case of Mrs. Pope. We offered to permit the counsel to read her testimony to the Court, if they would submit it to us, and if it showed anything in regard to her, that was criminal or indecent. The offer was rejected, and I have a right to infer from it as I do, and from what I have learned elsewhere, and from what is common, public rumor, that the proof was not enough to substantiate these charges. I say, unless there was convincing proof of them, these charges ought never to have been sent in here. They are a wanton, unprovoked, outrageous and cruel assault upon the character and good name of the respondent.

We come now to article nine. (Article read.)

The first Specification charges that the Judge ordered a new trial without cause, and without argument heard by him in Court, in the suit of Trentledge against the Milwaukee and Mississippi Railroad Company. Well, you recollect the proof on that subject, such as it has been. We shall offer you our proof, showing the entire circumstances under which that order of the Circuit Court was made. It was the common case of a verdict rendered by a jury under misapprehension of proof. That verdict had awarded too much damages, and the Court said to Mr. Mariner, that he had better take two hundred dollars, and let the verdict stand. Was that corrupt conduct in office? No. Why was the suggestion made? It was done to save delay. To save ordering the new trial for the amount of a hundred dollars. The suggestion being refused he proceeded to grant a new trial. In this interview with Mr. Kneeland, afterwards Kneeland said the amount of damages was too large; and the Judge told him if a motion was made for a new trial, he should have to grant it.

Specification four, charges that he oppressively exercises the functions of his judicial office, by exacting the excessive and unreasonable penalty of $10,000 in an appeal bond. Well, now, there is nothing in the testimony upon that specification that shows any capricious or oppressive conduct on the part of Judge Hubbell. There was a telegraphic despatch sent to Judge Hubbell to get the amount of the penalty fixed upon an appeal bond. Mr. Mariner went with it in hot haste to Judge Hubbell, and after pounding away at the inside door of Peck & Baker's store, he finally got access to him, and told him what he wanted. Well, the Judge told him he did not know what the effect of the appeal would be, and that was the reason why he was in doubt how much the bond should

be. Having no time for reflection, and being in a hurry, he sat down and wrote the order, fixing the penalty at the amount complained of. There is no proof of corruption or improper motive in all that. He made the order for $10,000, and that is the whole of it.

Specification five, sets forth the quashing of the indictment in the case of the State against John and Gilbert Lane. Well, the proof don't sustain the specification. The testimony upon it is, that it was a novel point—that the Judge wanted to take time to consult with the judges of the Supreme Court, and at the next Spring term he announced that he had made up his mind to quash the indictment.

Specification six, charges the Judge with giving notice to the complainant's counsel of a motion to dissolve the injunction in the case of McGrath against Cook, and forcing such motion to a hearing, and deciding the same against the complainant without reasonable cause, and without any such motion having been made by the defendant in the cause, and after having previously refused, in the same state of the cause, to dissolve the said injunction. Well, there was so much incidental argument in the progress of the investigation, upon that charge, that I do not think it necessary to dwell upon it for a single moment. You will recollect the case was in relation to some city orders to be paid upon a contract. The contract was subsequently assigned to Cook, and on which Cook was to receive the orders. A bill was filed to compel Cook to deliver up certain orders, and there was a balance of orders coming from the city, which Cook wished to get on a modification of the injunction. He did get them on a letter addressed by Judge Hubbell to the common council, but did not pay them into Court. Mr. Watkins, however, his counsel, became personally responsible for their payment into Court; and then, in pursuance of the motion, the Judge gave notice to the parties, and told Mr. Mariner particularly, that he should take up that motion the next morning, and dispose of it. The counsel on both sides did appear, and upon that argument, such as it was, the Judge granted the order dissolving the injunction, and released Mr. Watkins from his responsibility. When Mr. Watkins comes upon the stand, that whole matter will be more fully explained.

We come next to Article ten. (Article read.)

The second specification under that article pertains to the case of Trentledge against the Milwaukee and Mississippi Railroad Company. You have heard Mr. Kneeland's testimony upon that case, and you have seen that it shows nothing.

Specification four, is the case of Janes against Humphrey. No proof has been offered upon that specification, nor upon the fifth specification.

Upon the sixth specifiention, Pratt against Cleveland, I think there is no proof that shows anything. Mr. Wright was on the stand as a witness, and undertook to give some account of the case but utterly failed. His memory was entirely at fault, and he could not show any improper act, or any improper influence brought to bear on Judge Hubbell. There is no proof of the eighth specification, which once more brings in Mrs. Howe; and upon that subject I have sufficiently commented.

Specification nine, charges that the Judge allowed himself to be improperly approached, consulted and influenced in divers cases, by William A. Barstow; but his testimony does not disclose any such improper approach, consultation, or influence. It discloses that he talked with the Judge in reference to suitors

in his Court; but with no assurance on the part of the Judge that he would act upon any of his communications. In the next case, of Barstow against Wall, Barstow stated distinctly that he never received any assurance from Judge Hubbell of what his decision in that case would be.

In relation to specification thirteen, Mr. Dousman was not long since upon the stand, and if, upon the testimony of Mr. Dousman, it can be said by the learned counsel for the Managers, that any improper influence was designed, or thought of, or brought to bear upon the Judge, why, then, I will begin to believe that some of these specifications are proven.

The next specification is the case of the State against Jehiel Smith.

I think the proof pretty conclusively shows, that there never should have been an indictment in that case, that there could not have been a conviction, that the testimony of the girl alone, the chief witness in the case, did not make it a clear case for conviction. You remember that the testimony is, that after that case had proceeded for a time, during the intermission for dinner I believe, the Judge saw Mr. Jones, and Jones told him some yarn about the girl, the main witness for the prosecution, and told him he had better enter a *nolle pros.;* and on the coming in of Court, the Judge proposed to the District Attorney that he should enter a *nolle pros.*, and discontinue the proceedings. Now, taking all that to be true, does it support the charge that the Judge allowed himself to be improperly advised with and influenced. I recollect trying a murder case in Milwaukee, which occupied some three weeks, and where the moral proof of guilt was entirely satisfactory to the community, yet Judge Miller called the prosecuting officer to him, and suggested to him whether it would not be better to enter a *nolle pros.* It is a common suggestion, and I see no impropriety in it. At any rate, the prosecuting attorney in most cases would scarcely enter a *nolle pros.* without the sanction of the Court.

The next case is that of Reuben D. Turner, who was indicted for seduction.

The Judge is charged with being improperly influenced by Turner. Turner undertook to impress him with a conviction of his innocence. The Judge heard him all through and then told him he was satisfied he was guilty; but told him he would give him an impartial trial for all that. Was there any thing improper in that? Was it improper that he should be influenced by Reuben D. Turner, to give him a fair and impartial trial?

The next specification, in the case of the State against Haney, charges that the Judge was improperly influenced by George P. Thompson. Well, Thompson has told you his story. He went to Judge Hubbell to get Haney kept out of prison if possible. He went also to Smith and stated his wishes; but that he made use of any personal importunities or improper influences, is not pretended to be shown in the proof.

The next specification is the case of Wyman, that I have already commented upon.

Specification nineteen, instances the case of the State against John and Gilbert Lane, and charges that the Judge was improperly influenced by Jonathan E. Arnold, the defendant's attorney. Well, there has been no proof upon the subject matter of that specification, and I shall offer none, except to say that if the Assembly of Wisconsin or any individual says to me, that I was guilty of any improper influence with the Judge or any influence whatever, beyond fair argument in open Court, my reply to him is in plain Saxon English, that he is a liar.

Specification twenty, is the case of Theodore Perry and others against the Comstocks, Sanderson and others. The proof on that specification, shows that the suit had been decided by the Judge before the loan of money, which is in proof, had been solicited; and as to the conversation that took place here at Madison, I see nothing in it to warrant any idea of improper influence. Mr. Sanderson sought to know as well as he could, what the Judge thought of his case, and endeavored to pump him a little, to learn if he was influenced against him by the high position and personal character of the Comstocks. He testifies that in no interview, was any assurance given by Judge Hubbell, of how he should decide the case.

We come now to article eleven, and the last. (Article read.)

Of the first, second and third specifications, I have already spoken sufficiently.

I am not aware of any proof to sustain the charge in the fourth specification, that the Judge officiously intermeddled and advised with Mr. Finch upon that subject.— He barely told Mr. Finch that he thought the claim against the City had better be settled. Finch thought so too, so advised the City, and the City did settle it. The two following cases I have examined. We then come to specification seven—Converse against Rogan. On that subject Mr. Rogan has been a witness, and I see nothing in his proof which establishes any officiously intermeddling. The Judge tried to take care of his interest. On the ground of infancy, taken by him in the case, several questions were raised. It was a novel thing—indeed it was a delicate question, and the Judge wished for time. He was holding a jury court at that term, and did take time to examine the question presented. The Judge intimated to him, as he swears, that he would put off the sale while he was examining the case, and said it would make no difference if I should be the purchaser. It will appear in evidence from myself, if it should be necessary, that I had bid off the property myself.

Specification eight brings up the case of McBride and Wheeler. It does not occur to me that there is any proof upon that subject.

The ninth specification charges the Judge with improperly entering the jury room alone and then discharging the jury privately. You have the testimony of Mr. McArthur upon that specification. The jury, as appears by his testimony, were left in the court room with instructions to the officer, to ring the bell when they had agreed. He, however, rung it when they were not agreed.

Mr. McArthur and Mr. James repaired to the court house. The officer at the door, under the usual instructions, did not let them in for the space of about three minutes. The Judge however, had arrived before them. It being about 12 o'clock and there being no prospect of their agreeing, he discharged them, and they all came out together. If there is any impropriety in going into the court room, before sending in an officer to turn the jury out of doors, I apprehend it is not impeachable.

I have referred sufficiently to specifications ten, eleven, and twelve.

Upon specification thirteen, the testimony of Kneeland utterly repudiates any improper influence, because Kneeland testifies that the Judge told him that the company was giving him a good deal of trouble and advised them to arrange for the right of way before breaking ground. I see nothing in the proof that was designed or could have been designed to improperly influence Judge Hubbell. The testimony of Mr. Kneeland entirely precludes any such idea.

So much for a running, rapid review of these various charges and specifica-

tions. My object has been by no means to argue them, but simply to call them to your attention in connection with the legal positions I laid down this morning, while they were fresh in your minds; and also to attract your attention to the leading witnesses who have testified in regard to these points; and also to state to you such additional and explanatory proof, as we hope to be able to offer you. I have only now to remark generally, in regard to them, that the proof is lame, inadequate and unsatisfactory; that there is no proof from beginning to end, of any wilful intention to do a wrongful or an illegal act. There is a total want of proof of any motive to do a wrong or illegal act. On the contrary, the proof does show, most satisfactorily—their own proof does show—that these matters, which they allege to be illegal and wrongful, were all matters done innocently. They furnish, in other words, the proof of the innocence of the motive with which they were done. They were done in the ordinary course of business, inadvertently, without pay, without promise, without a selfish object to accomplish. They are reconcilable, all of them, with perfect innocence of intention; and if so, then they are not impeachable, because they are not corrupt conduct in office. Where is the proof of corruption?—That is not established. It is not conduct, but *corrupt* conduct in office; and they, themselves—this very prosecution—which has made this long string of allegation of corrupt conduct against the respondent at the bar, has not only failed to show corruption, but has furnished the very proof which precludes the very idea and the possibility of corruption. To these charges, thus brought against the respondent, he has appeared and filed his plea in a usual and legal form; and has attended here upon his trial. In the course of the opening remarks of the learned counsel for the Managers, he saw fit to comment upon this plea with marked severity. He informs the Court that he is surprised to witness such a plea; that it is the felon's plea; the general plea of not guilty. Not denying so much his guilt, as the proofs that might be adduced against him. Why, Mr. President, if I were to believe the one half that the counsel has charged or insinuated against the respondent, in the course of that argument, or speech, I am surprised that he should be surprised, that the respondent should have put in the felon's plea. I should suppose, if his estimate of the respondent is such as was exhibited in that argument, that the felon's plea would be precisely the plea which he would have expected; for we cannot expect, in reference to any expectation of the counsel, any thing else than that the respondent at the bar is indeed a felon, or no better than a felon; but he does say that he is surprised that the respondent should put in such a plea. May it please the Court, it is a usual plea, and entirely proper plea not for felons alone, but for honest men who are unjustly accused of crimes. It is the ordinary plea in criminal accusation; it is a plea well known to the practice of courts of impeachment. The respondent may either file a bill, a specific answer in explanation of all the charges which are laid against him, or he may file the general plea of not guilty, and thus not only deny his guilt, but put the prosecution to the proof of the charges; and that is all the respondent here has done, or sought to do.—Does the learned counsel state here that that is wrong—that the respondent should have the privilege here of denying his guilt, and calling upon his accusers to prove the charges? Did he expect the respondent to come in here with a cognovit? Did he expect him to come in with answers that should concede his guilt? To show that it is a proper plea, I will read a single sentence from

Woodeson. "The party may plead that he is not guilty, as to part, and make a further defence as to the residue; or he may, in few words, saving all exceptions to the articles, deny the whole charge, as was at length done by Archbishop Laud in the irregular proceeding against him."

We have then a very respectable precedent and authority, for the course that has been pursued in the present case; and I do not concede because he has filed this plea, he is to be stigmatized as having filed the felon's plea. I would like to ask the counsel if, whenever he should be sued upon a promissory note, and should file a non-assumpsit, he would like to be charged that he had filed the felon's plea; yet it is as much the felon's plea, as the plea in this case. It is not a just accusation in the one case, nor in the other. But on this subject let us see if there is not a reason for the course that has been pursued; and a reason satisfactory to every member of this Court. Here are eleven charges, with any quantity of specifications. I know not the number, I have never counted them. They relate to matters that run through the whole judicial career of Judge Hubbell—a period of more than four years. They extend through every county from this Capitol to the Court House in Milwaukee. They relate to a great many parties, transactions and events, throughout that whole lapse of time. To have filed a specific answer to each one of these charges and specifications, setting forth all the facts and explanations, to have made it complete and perfect, would have been a Herculean task; if attempted, how imperfect it must have been. In the first place, it would have required a perfect memory; in the second place, it would have required access to all the records of all the Courts of all the counties. In no other way, could the Judge have made a truthful and accurate statement of his defence, to each one of these charges and specifications. How much better then to file this general plea and bide the proof, than to undertake to give explanation of each one of these transactions, when he might have made mistakes and injured his own cause in the estimation of the Court. Such a plea would have made a large book, that in the Hungerford and Cushing case, would have been no comparison to it. Really, however, I apprehend that the learned counsel, in making that assertion, rather sacrificed sense to sound. I apprehend that he did not really intend to convey such an insinuation, as the word imports. I apprehend that he sacrificed truth and soberness, for the time being, to sparkling antithesis, and splendid declamation.

And now, a few remarks more of a general nature, in connection with the defence. These accusations against the respondent, are mainly in relation to too great freedom of conversation, and of conduct towards parties and suitors. Now in the case at bar there may be an explanation, and a very proper one for me to suggest and urge upon you, an explanation of a great deal of this conduct, which has been in proof with regard to the defendant. Some of it, I think, may be imputed justly to our judiciary system—to the elective system. It is a system which makes the Judge more or less dependent upon the people. He looks to them for his office; and how naturally will poor, imperfect, human nature yield to its influences. How natural that he should be disposed, on all proper occasions, to conciliate the favor of the people; not, perhaps, by positive prostitution of his office, not by corrupt conduct in office, but in a free, frank and friendly intercourse with his fellow citizens. It is naturally incidental to the very elective system, that we have to encourage intercourse with free, friendly and conciliatory terms between the Judge and the people of his circuit.

But again, and of more importance in this case, I attach great importance to the peculiar composition and character of the respondent, in accounting for all these facts, which have been in proof, instances of imprudence and indiscretion, and that is all—that is the sum and substance of the whole proof here—a series of indiscretions and imprudences. Now, human beings are not all alike—one man has a cold, phlegmatic temper—has a misanthropic and dignified disposition, and perhaps avoids association with his fellow men—he lives within himself. Such a man would pursue one course of conduct; another man, and such is the respondent at the bar, is of a frank, open, communicative, confiding, generous nature—fond of his friends—fond of society—fond of conversation—naturally inclined to be polite—always ready to act the gentleman, in his intercourse with his fellows. These are the characteristics of the respondent, and they account, in my humble judgment, for a great portion of the facts, which have transpired here in proof. Should a friend in the humblest Irishman who walks the streets of Milwaukee, arrest him and ask him what he could do with this and that difficulty, he would not spurn him, and say get away from me. I am going to hold Court; and put himself upon his dignity.

I have seen him stop a thousand times, and talk with such men as he would do with men of the highest rank. Politeness always does that. It is the rule of his conduct; and when he has been overpressed with business, I have known him to take a round-about way to the court room to get rid of these repeated solicitations that would meet him on his daily walk. Such is the character of the man. He does not feel bound, perhaps, even when improperly solicited, to cut a friend adrift. He does not say—Sir, I am Judge: your conduct and conversation may improperly influence me—I'll have nothing to say to you. On the contrary, he says—this man does not know any better; he does not seek to corrupt me; and no matter if he does, he cannot do it. I will, in politeness, hear his story, and will pass him off unoffendingly. And so he hears his story; gives him some advice perhaps, and, perhaps, sends him off to a lawyer.

I remark, again, there are no badges of guilt attached to his conduct, so far as the proof shows. He has not attempted to cover up or secrete his conduct; every thing has been done openly and above board. The very publicity with which he did things complained of, are strong proof to preclude the idea of guilt. Is not this point well taken in human character and human life? The corrupt man, the corrupt judge, seeks hiding places. He acts in secret and in the dark. He does not allow himself to be bribed in openness. He does not allow himself to be guilty of corrupt conduct in the face of the world. Yet the conduct, as proved in this trial, has been always open and above-board, known to others, attended with such publicity as to absolutely preclude the idea of any intention of wrong.

Another matter worthy of notice, notwithstanding the great number of charges and specifications running through so many years, it does not appear that any of the parties to suits decided, and involving his conduct have appeared as his accusers.—This is a significant fact, and authorizes the presumption that this impeachment has been gotten up from improper motives. It is, indeed, a significant fact, that so far as any proof here is concerned, none of the parties or suitors in the numerous cases which have been decided, which have been inquired about here, and which have been the subject matter of these charges, and accu-

sations have appeared here as accusers of the Judge. They have never complained. They have never been dissatisfied. They have never instigated this transaction. The records of the counties in the circuit will show that the Judge has held Court more than forty weeks out of the fifty-two in the year. He has tried a great variety of cases in every county, cases of importance involving a great deal of property, and bringing almost the whole community, first and last, before him. Wonderful, indeed, would it be if there should not be a great deal of complaint. Wonderful, indeed—for both parties cannot succeed in a law suit—and that there should not have been some to charge him with corruption, bad faith, and wrongful conduct, and spread their complaints before the Assembly; and yet in none of these causes dragged up here, have the immediate parties concerned found any fault with the Judge, nor come here as his accusers. This prosecution did not proceed from them; but the record of the legislature show, that it did come from a man whom we shall be able to prove was once, not a party before him, but a juror in his Court; but from a remark made by the Judge, he conceived his malice against the respondent, and from that time forth, in public, over and over again, he has threatened that he would follow the Judge to the ends of the earth, for the insult cast upon him. It was he who made the complaint, and not one of the parties who had been in his Court.

And, again, it is another significant fact—it is a trifling one—but I may allude to it in a proper manner—that the learned counsel who is here conducting the prosecution in behalf of the Managers, was himself, at a former period, a friend of the respondent, and I believe, supported both with his vote and pen through the public press, for re-election to the office he now holds, and aided to refute many of these matters now brought up here, when they were spread before the public, and handled in the public press during that canvass.

Again, the Judge has held court more than forty weeks in each of the years he has been upon the bench. Now, if he be a dishonest man—if he be a corrupt man—if he will receive bribes; with the vast amount of business that he has done, with the immense amounts involved in controversies before him, with the desire for victory that always prevails in litigated cases, with parties ever ready to approach him, with his approachable nature, how does it happen, in the face of all these facts, that Levi Hubbell, if so corrupt a man, has from year to year become impoverished in his private fortune? Why is it that he is not a rich man instead of a poor man? Why is it that he has fallen behind hand from year to year? If he is corrupt, if he is accessible to a bribe, if he bargains decisions for money, he ought to be, and would be rich. The very fact that he is poor, that while he has been devoting himself to the public, his private fortune has gone from him, is an irresistibly strong circumstance in his favor to preclude the idea of bribery or corruption.

But, again, another circumstance—and I hope if it be within the rules governing this Court, that the hammer of the President may be delayed ten or fifteen minutes longer. The people, in their sovereign capacity, and it is in that capacity that they are here, moving this prosecution through the Assembly and its Managers—I say the people on another most important occasion have themselves answered these accusations, they have endorsed the respondent at the bar by a re-election to the office of Circuit Judge by a strong and decisive vote. I urge that, and I may fairly urge it in his behalf, that after, in fact, many of

the transactions, such as the Haney case, and many others had occurred, and in a campaign, the most virulent and bitter I ever knew in any land, where every thing was raked up that could be, and spread before the community, with vindictiveness and malice, through the public press, the people—the people! endorsed the character of the respondent; and repudiated those charges, which, if true, unfitted him for their support or favor for the office for which he was running, by re-electing him, by a most decisive vote over one of the lawyers of the Milwaukee bar, and one of the most popular men in our county. It was most emphatic. It is not to be said that the people did not understand that contest. Every man knows that these charges were spread before the public. Chapter upon chapter was written upon the Haney case, and paragraphs upon it were paraded through the public press, with such comments as to give it power and efficacy.

Now all these circumstances are moral circumstances surrounding the case, which are fairly subjects of observation, and fairly subjects that may be taken into your consideration in disposing of the leading question which is at the bottom of this whole proceeding; and that is—is there or is there not corrupt conduct in office shown—has there or has there not been shown here a guilty intention? What was the motive which governed the conduct of the respondent in all these acts, which have been offered here in proof until that be shown by positive proof, or by circumstances accompanying the act from which they may derive an irresistible inference, then the respondent must go clear. And further still; if the proof surrounding the act, be of such a nature, as to be consistent with innocence, as to preclude the idea of guilt, then does he stand most completely vindicated, and if he does stand vindicated, he stands so by the proof of the prosecution itself.

I am admonished, Mr. President, that I have already trespassed too long upon the patience of this Court, and I will now draw my remarks to a close. The consequences of this impeachment to the respondent himself, are indeed momentous. For upwards of four years last past, he has devoted himself, with an industry never surpassed, for a compensation entirely inadequate, and with a fidelity which has seldom, if ever, been questioned by parties and suitors, to the discharge of his duties, as Judge of the Second Circuit. He has been the slave of the public. He has devoted himself unremittingly with a poor reward, except the consciousness of having done his duty, to the public service. His reputation as a man, his reputation as a Judge, are dear to him. They are now at stake. They are in hazard before you, and it is for you to say in the judgment, which you shall now render, whether at his age, after such services performed, with fortune gone, with character ruined, with a young and innocent wife who worships him as an idol, and whose hopes may be blasted for ever, with sons growing up into manhood to inherit his disgrace—it is for you to say, whether you will send him forth, with a punishment which is more ignominious than death itself; or whether you will restore him in honor to the bosom of his family, and to the confidence of the public.

After the proofs shall have been submitted, for myself, I shall cheerfully commit this case to your intelligent judgment, under the responsibility of your oaths, and I shall likewise most cheerfully commit the character of my friend, personally and judicially, to the judgment of you, his peers, and to the judgment of the world.

Examination of witnesses on the part of the defence, begun by Mr. Arnold.

ASAHEL FINCH, jr., called and examined upon article nine, specification one; article ten, specification two; article eleven, specification one.

Q. Do you recollect a suit of George Trentledge, against the Milwaukee and Mississippi Railroad Company, pending in the Milwauke Circuit Court?

A. I do, sir.

Q. When was that suit tried?

A. Well, sir, really I cannot tell you when; I only know it was the last jury term at which Judge Hubbell sat last fall; I think perhaps, September.

Q. Were you one of the attorneys?

A. I was attorney for the defendant. I tried the suit for the defendant.

Q. Did you file a motion for a new trial in that case. A. I did, sir.

Q. Will you state to the Court what led you to file that motion for a new trial?

A. I filed the motion because I thought ——

Mr. RYAN. Don't state what you thought, Mr. Finch.

A. I filed the motion for the purpose of getting a new trial.

Mr. RYAN. That answer I have no objection to.

Q. What was the main ground relied upon to sustain that motion?

A. Excessive damages, because it was contrary to law and evidence.

Q. Was the verdict in that case clearly against the instructions given by the Court?

Mr. RYAN. I have no objection to Mr. Finch stating the facts, but I do not think it proper to get at them through the opinion of the witness.

Q. Do you recollect the amount of the verdict?

A. Three hundred dollars, I think.

Q. Will you state the nature of that suit; what was the proof, and what was the instruction of the Court?

A. The suit was an action on the case, brought to recover damages on the Railroad Company, for so constructing a portion of their road as to dam up a stream, causing a breach to take place, and to submerge the premises of the plaintiff, destroying some roots and strawberry vines, and otherwise injuring the freehold.

Q. Now what were the premises of the plaintiff?

A. The premises which he claimed to own, were about five acres, I believe; some three-quarters of an acre, or perhaps more, as shown in the evidence, was improved and occupied as a garden. I do not know that it was all occupied and improved, but what was under improvement, was covered with potatoes and things of that kind.

Q. What portion of it was proved to have been submerged?

A. The testimony on that point was somewhat conflicting.

Q Give one item of proof in regard to damages.

A. Well, there were several matters of damage testified to; one was the quantity of vegetables. This happened in the month of March or April. These were vegetables which had been put in the ground, or into their root house the fall before. There were an asparagus bed and strawberry bed.

Q. Now give us the history of the strawberry bed, and the proof upon that.

A. Well, the testimony was, that the damages were fifty dollars on the strawberry bed; it was sworn up to that point.

Q. Will you state the cross-examination of that witness, how you carried it on, and what he showed?

A. Well, it would be difficult to tell all that passed on the cross-examination. We cross-examined the witness in relation to the points he testified about.

Q. Well, on the cross-examination, how big a bed of strawberries was there, and how many plants?

A. The witness was Mr. Parker. He had set out a strawberry bed for me, and I examined him in relation to the extent of the bed. It was disclosed on the cross-examination, that the plants were sold by him to the plaintiff in this suit; that there were some fifty or a hundred of them; that the original cost of them and the preparing of the ground, and setting them out, he made out to be worth some twelve shillings to the extent of the whole lot. He swore upon his cross-examination, that it could be done for that, and that they were set out in the month of August or September previous, and the damage which he alleged, occurred in the month of April following. He set out about four thousand plants for me, and charged me twenty-five dollars. In this case there were fifty to a hundred plants, and swore that the damages done to them, was fifty dollars, and on cross-examination swore to what they cost.

Q. How long did he say it would take to do it?

A. I don't recollect what time he said.

Q. At the time of granting the new trial, do you recollect any remark of the Judge in regard to the strawberry bed?

A. I did not hear him make any remark in relation to it.

Q. Were you present when a new trial was granted? A. I was.

Q. Well, now, if you recollect any thing in the charge of the Court, which rendered it certain to your mind that the verdict was excessive you can state it.

A. I cannot call to mind the specific language of the Court in the charge to the jury. The fact about the strawberries was pretty well impressed upon my mind. I only recollect in general terms, if it is proper for me to state the charge in relation to the evidence. The Court charged the jury in relation to the evidence to support the damages claimed by the plaintiff; and commented upon some portions of the testimony; and among others he alluded to this item. The proof rested entirely upon the testimony of Mr. Parker, this one witness. There was no other evidence whatever in relation to it. The attention of the jury was called to his cross-examination, and what he stated there.

Q. In conversation with the attorneys in open Court, upon what ground did the Judge grant a new trial?

A. On the ground that he thought the evidence did not support the verdict; that the damages were excessive. That was the main point to that I relied upon.

Q. One question now in regard to a matter that I believe you you have been asked about before. At the time of filing the bill of foreclosure in the case of Miller against Humble and others, did you know that Graham was interested in that matter?

A. I supposed he was interested because there was a judgment in his favor which made him a party.

Q. You know also that he represented Judge Hubbell, did you not?

A. That never occurred to me. I never thought anything about it till after the foreclosure.

Q. You had known it before. Had you not?

A. Well. All I know about it was, at the time the suit was called on the law side of the Court; he stated then that he had an interest in the suit.

Q. Do you recollect of having a conversation with Judge Hubbell in your office, or his, at the time of drawing up the decree, and looking over it with a view of distributing the fund?

A. That question has been propounded to me once or twice before. I do not recollect any thing distinctly about a conversation of that kind. I had a conversation after the decree, and just before the sale. He applied to me for the amount of my claim, and said that he had been to see Downer, and said he wanted to know whether it was an object for him to bid it off to save that judgment. The decree, as I stated, was in open Court. I was in the habit of taking all my decrees in open Court.

Q. After the decree, and after the sale, and at the time of the confirmation did you know, or were you not perfectly advised of the interest which Judge Hubbell had in the suit?

A. I knew it from the time he made the statement to me.

Q. Well, was not that before the confirmation?

A. Yes, sir! and before the sale.

Cross Examination.—Q. In the case of Trentledge against the Rail Road Company, did the plaintiff's witnesses testify to damages to the amount of three hundred dollars?

A. Well, I did not think they did, Mr. Ryan. I figured up the amount they had claimed to have established, and so argued to the jury.

Q. Well, did not the counsel on the other side claim very confidently that the witnesses established damages to the amount of four hundred dollars and over.

A. Yes, sir!

Q. Was there any evidence on the subject of the strawberry-bed on either side, except that given by Mr. Parker? A. No, sir!

Q. Was he a nursery-man? A. Yes, sir!

Q. Was it proved that Trentledge was keeping a garden for the purpose of selling vegetables in the market of Milwaukee?

A. It is about two miles out of the city.

Q. Was it not in evidence, that that garden lay upon rich bottom land, somewhat low?

A. Yes, sir! There was some testimony to show that the land was rich, and on the Menominee bottom.

Q. Was it not in testimony, that the construction of the rail road, as it then was, subjected that land to overflow once or twice a year, and destroyed its use for a garden?

A. There was evidence tending to that point. That is the position they assumed and which I denied.

Q. Was it not testimony in that case, that Trentledge had purchased that ground, and built his house upon it for the purpose of keeping a garden for the sale of produce in the city of Milwaukee? A. I think so.

Q. Was it not in evidence that the overflow broke him up?

A. Well, they tried to establish that fact. There was some evidence showing that way. It showed that the ground had been submerged, and that he had to leave the premises temporarily.

Q. Was there any argument that you know upon the motion for a new trial?

A. The case was not argued.

Q. Were you present when Mr. Doran proposed to argue it?

A. I have no recollection of his proposing to argue it. When the verdict was rendered, I went and said to the Judge I should file a motion for a new trial. I think the next morning I drew up my motion and did file it. I think the next day the court was going to adjourn. I went up rather late, Mr. Doran was there, and the Court stated that it had a motion before it for a new trial in that case, and called immediate attention to it, and said he had made up his mind to grant a new trial. Mr. Doran was there and Mr. Smith.

Q. Were they there when you came there?

A. I think they were. I am quite sure one or both of them were there, when it was decided.

Mr. ARONLD. You have been asked whether it was in testimony that Trentledge was broken up in his business. Was there not testimony, showing that he went on and cultivated his garden that same year?

A. I said that he was only temporarily broken up.

Q. What was the value of the shanty?

A. Well, they proved that the shanty was worth fifty dollars. We reduced it down to fourteen dollars, I believe. It was a shanty of rough boards with no floor.

Q. You seem to be acquainted with strawberry vines. How much could those of Trentledge have grown or increased in value?

A. I questioned Mr. Parker in relation to that, and he stated that the runners would shoot out some, but would not spread much the first fall.

Q. Did or did not the Judge intimate when the verdict came in that the damages were excessive, and that he should have to grant a new trial?

A. Yes, sir, he stated on the rendering of the verdict, that the damages were excessive, and upon my saying that I proposed to file a motion for a new trial, he told me to file one.

Q. Do you know of any influence brought to bear by Mr. Kneeland or anybody else, upon the Judge in reference to the decision of that motion?

A. I did not, sir, I never had any conversation with him myself off the bench.

Doct. E. B. WOOLCOTT called, and sworn to the same specification.

Q. Do you recollect a suit in the Circuit Court of Milwaukee county, of Trentledge against the railroad company? A. I do, sir.

Q. Were you acquainted with the premises occupied or owned by the plaintiff, Trentledge?

A. Yes, sir, I have seen them.

Q. Did you have occasion thence after the high water flood of March, 1852.

Mr. RYAN. Was he a witness on that trial?

Mr. ARNOLD. He was. Were you a witness on that trial? A. I was.

Q. Did you give to the jury any estimate of the damages done to the plaintiff, by reason of his land being submerged?

A. I think I did. It was pretty difficult matter to fix in my mind the exact amount, and I could not in fact do it. What I had to say was only approximating what I thought the damage was. I think I plead the damage somewhere betwixt twenty five and fifty dollars.

Cross Examination.—Q. Doctor, you were unhaply enough to be one of the directors of that company, at that time, were you not? A. I was.

Mr. KNOWLTON. We propose now to examine Mrs. Wm. H. Howe, to article 7, specification 2; article 8, specification 1, and article 10, specification 8. It is the same matter remodeled, or rather moulded in different forms, in all these specifications.

Mrs. HOWE was sworn and examined.

Q. Mrs. Howe are you the wife of William H. Howe?

A. I am, sir.

Q. Where do you now reside? A. In Palmyra.

Q. Where did you reside in the fall of 1850?

A. In the town of Eagle, Waukesha county.

Q. Do you recollect an interview between yourself and Judge Hubbell, at Waukesha, during the term of the Court, and if so, when was it?

A. I do. It was two years ago last fall—about November, during the term of the Court.

Q. Will you state to the Court, Mrs. Howe, what brought about that interview, and what was the object of it?

A. It was in consequence of the decision of a jury on a note that Mr. Howe was sued for. Mr. Simpson was plaintiff in that suit.

Q. Now what was there in that verdict, that Mr. Howe was dissatisfied with?

A. Previous to the note being sued it was left in Milwaukee, in the hands of Mr. Byron as security for a stove. Mr. Byron wrote to Mr. Howe that he had such a note in his hands and wished he would pay it. Mr. Howe went into Milwaukee to make some endorsements on the note, and went to Judge Hubbell and asked him if these endorsements were valid. He said they were. He made the endorsements, and the next week sent in the money to pay the rest. Mr. Simpson objected to them and said the endorsements were not good. He sued the note then, to collect the endorsements, and when it came before the court, one endorsement was run through by a pencil mark. That endorsement was forty dollars. The jury decided to throw away those endorsements, in consequence of that pencil mark. The Judge instructed the jury to take the note as it was. One of the jurymen said they supposed he meant to have them throw away the endorsement, it being marked out. Mr. Howe was indignant. He thought the Judge was wrong in the matter and was prejudiced. He was going to Milwaukee after the decision, and I was going with him. We stopped at Jones' Hotel, in Waukesha. I told Mr. Howe I would see the Judge. I did not want to lose the money, and if he was prejudiced I would speak to him about it. He said that he would not see him, but I could do as I pleased. I told Mr. Holliday I wanted to see the Judge on business, and told him what that business was. The parlor was occupied by Mrs. Jones and the family. There was but one parlor in the house.—Mr. Holliday came up to our room and asked me if I had seen the Judge. I told him I had not. He said he would give me an opportunity in his room. He went down, got a light, came to the door and said "come with me." I went to a room, I supposed it was Mr. Holliday's. He went to the next door, called the Judge, and the Judge came in. I stated the case to him about the note and the endorsements. He said he remembered them, but he did not

before, about the endorsements. He said the endorsements were valid and should not have been thrown away, and he did not see that they were marked out. He said he was sorry, and thought Mr. Howe ought to have had the endorsements allowed him. I told him I thought we ought to have a new trial. He afterwards granted a new trial by putting these endorsements before the court.

Q. How long did that interview last?

A. From five to seven minutes I should think, but I cannot state exactly.

Q. Do you recollect any one coming to the door while you were there?

A. Yes sir. Mr. Finch came to the door. I do not know whether he rapped or not. He came in; Judge Hubbell met him at or near the door. He came in and bowed. Judge Hubbell says, "walk in Mr. Finch—Mrs. Howe." Mr. Finch then backed back again and bowed, and Judge Hubbell said, "walk in Mr. Finch, take a seat—there is nothing private here"; but he refused, and with his finger in his mouth he bowed out of the room insinuatingly, and said, "Ah! Ah!!"

Q. How soon after that did Judge Hubbell leave the room?

A. I do not think I set down again. I thought perhaps I was intruding, and perhaps left in two or three minutes.

Q. Was your conversation with Judge Hubbell at this time in regard to any other suit except this suit of Simpson. A. No sir.

Q. Was there any conversation about the suit against Mr. Howe for perjury?

A. I cannot say whether Mr. Howe knew that night about that indictment or not. On his return from Milwaukee, Mr. Pratt notified him of the indictment and he gave bail. The indictment was continued and tried at the next spring term. I was not at Waukesha at that trial. I never was in court, nor at Waukesha after this interview, at any court time.

Cross Examination.—Q. Mrs. Howe, will you state to the court whether, during the past winter or spring, you have had any conversation with Judge Hubbell on this matter?

A. I have never seen the Judge from that time to this, only to pass the time of day and say "how do you do, sir." I have never had any conversation with him upon this subject.

Q. Have you with any body else? A. I presume I have.

Q. Do you recollect any body calling on you at Palmyra and having a conversation with you on the subject? A. No, sir, I do not.

Q. Will you state to the court what your objection was to having your conversation with the Judge in Mrs. Jones' parlor?

A. I never had any objection to it.

Q. Well, if you had no objection, which of the two rooms—the parlor or the one in which you had the interview—did you think the best fitted to hold such an interview in?

A. I thought the room in which I held it the best, because it was business that concerned myself and the Judge, and not Mrs. Jones.

Q. Why did you go into that room, and not into the Judge's own room.

A. I obeyed Mr. Holliday's advice. I had no choice of room myself.

Q. Was the room where you were a bedroom? A. Yes, sir.

Q. Where did you sit in that room? A. I sat in a chair.

Q. Did you sit upon the bed any part of the time?

A. I do not recollect distinctly whether I did or not.

Q. When you first went into the room where did you sit?

A. In a chair. I arose when Mr. Finch came in, and whether I then sat down on the side of the bed or not, I do not recollect.

Q. Do you recollect, Mrs. Howe, of telling any one that at that interview with Judge Hubbell you used some such language as this to him—"Business first, Judge, and pleasure afterwards"? A. No, sir.

Q. Do you know Horatio N. Davis? A. Yes, sir.

Q. Do you recollect telling him any such thing?

A. No, sir. Not those words I do not.

Q. Will you state what you did tell him?

A. I don't recollect what I did tell him. He came to our house last winter and had some conversation with me about the Judge's trial here; but what I said to him I cannot remember.

Q. Did you in fact use any such language to Judge Hubbell?

A. I told the Judge I had come to see him on business. He put his arm around me and playfully remarked, "How small you are, Mrs. Howe." I said, "Judge, you must treat me gentlemanly." He said he had no intention of doing otherwise. I don't think I did use such an expression, though I might have done so. I say a great many curious things, but I don't think I said that.

Q. Had you any conversation shortly after that interview, with Mrs. Jones, the landlady of the house?

A. Well, I might have done so. I think Mrs. Jones and I did have some words about it; but they were nothing material. I believe Mrs. Jones told me I might have had my interview in the parlor, and I told her I preferred to have it some where else than in a parlor, which was used as a nursery, and that I did not believe Mr. Holliday would tell me to see the Judge in that room, if it was not perfectly proper, and that I believed I had done right.

Q. What else passed between you and Mrs. Jones?

A. Well, I can't say. That is the substance of it.

Q. Did she make any complaint to you about the interview having been had in her house? A. She said what I told you.

Q. Did she request you to leave the house? A. No, sir.

Q. Did Mr. Jones come to you that day, or the next day, some where, when you were in Waukesha, and ask you to return to his house?

A. No, sir; because I did return to the house in my return from Milwaukee, and had dinner there, and was treated very well.

Q. What time of day was that interview?

A. About eight o'clock in the evening. We did not get there till dark. The interview was after supper.

Q. Was it after Mr. Finch came to the door, that the Judge remarked upon your smallness? A. Yes, sir.

Q. Had you and the Judge been sitting together before or at the time he came in—I mean close together?

A. I think I sat in a chair, and the Judge sat on the bed before me.

Q. Had any of these playful little remarks passed between you and Judge Hubbell prior to Mr. Finch's coming there? A. No, sir.

Q. I wish, Mrs. Howe, you would recollect yourself, and see if you are not able to state positively, whether or not you used any such expression as "business first, Judge, and pleasure afterwards."

A. If I can I will; but I don't remember it now.

Q. Had you before that time spoken with Judge Hubbell on the subject of that matter? A. No, sir.

Q. Had you written to him on the subject? A. No, sir.

Q. Have you since spoken to him about it? A. No, sir.

Q. Nor written to him? A. No, sir. Not that I recollect of.

Q. Well, I wish you would recollect, Mrs. Howe. Have you written to him at all?

A. Yes, sir. But I don't think I have written to him on that subject?

Q. Have you written to him on the subject of the indictment against your husband for perjury? A. No, sir.

Q. Are you certain, Mrs. Howe, that you did not speak to the Judge about that indictment at that interview?

A. I know that I did not; I did not know of it. I do not think I ever stated that I spoke to him about it.

Q. When did you first become acquainted with Judge Hubbell?

A. He had called at our house when we kept a public house, once or twice, and I had passed a few words with him.

Q. Was your husband with you in Waukesha that evening? A. Yes, sir.

Q. Will you tell me the reason why he did not call on the Judge instead of yourself.

A. Because he was indignant at the Judge.

Q. Did he know of your going to see the Judge? A. He did.

Q. Why did he let you go? A. Because he let me do just as I liked.

Q. Where were you and your husband staying that night?

A. We stayed at Peter G. Jones' tavern that night.

Q. I asked you whether Judge Hubbell had spoken to you on this subject since that interview. Have you had any correspondence with him on the subject? A. No, sir. Not at all.

Q. How lately have you had correspondence with him at all on any subject?

A. Well, I think not since he was elected Judge the last time.

Mr. ARNOLD. You say Mr. Howe was indignant at the Judge; I will ask you if it had not been a fact that at the first judicial election, you and Mr. Howe had been opposed to the Judge, and supported another candidate pretty warmly.

A. Yes, sir. We were in favor of A. D. Smith.

Q. Had you been in the habit of taking quite an active interest in our political affairs? A. Well, somewhat.

Q. You said you had written to Judge Hubbell. Are you not in the habit of corresponding pretty extensively with a great many individuals over the country upon political subjects?

A. Yes, sir. I have corresponded some.

Q. Not only in our own State but abroad? A. Yes, sir.

Q. In regard to having the interview in the room which you did use, was that entirely at Mr. Holliday's suggestion? A. Yes, sir.

Q. What reason did he assign?

A. He told me he would not speak of any business matter before Mrs. Jones.

Q. Had Judge Hubbell any thing to do in making the arrangement?

A. No, sir. I do not think Judge Hubbell knew who was in the room when he was called to see me.

Q. Will you now state to the Court, Mrs. Howe, whether, in your interview in that room, Judge Hubbell made to you any indecent proposition?

A. Not at all.

Q. Nor any proposition of any kind connected with that suit?

A. Not the first.

Judge HUBBELL. Mrs. Howe, I want to ask you to state upon your oath, whether in any place, or any where, or ever, any familiarity of conduct whatever was offered by me to you.

A. We never had an interview alone excepting that one time, and have never passed three words together alone since, excepting, perhaps, the time o'day in the street.

Q. Have you stated the whole truth in this matter? A. I have.

Q. Do you remember last winter, one afternoon, I was passing up the street, and met you, and said to you, I believe this is Mrs. Howe, and it was you; and I then asked you if you had been subpœnaed before the investigating committee. A. I do.

Q. Do you recollect the remark I made?

A. You said you expected that I would be subpœnaed before the committee in Madison, and if I was, you told me to go and tell all I knew.

Q. Is that all that ever passed between you and I, about this investigation, by letter or otherwise? A. Yes, sir.

Mr. ARNOLD. What was the object of Mr. Davis, when he called at your house.

A. Well, he said he met Mr. Howe, down at Eagle, and he told him to call and see his family. He always calls on us, when he passes that way.

Q. Was Mr. Davis around fishing up testimony for this impeachment?

A. I heard that he was; but I do not know.

Mr. RYAN. You stated to Mr. Arnold, that at that interview between you and Judge Hubbell, he made no indecent proposition to you. Did you consider his putting his arm around you, as no indecent proposition?

A. No sir. For I resisted it. I did not consider it an indecent proposition.

Q. What did you consider it?

A. Just as it was. My view was, that it did not amount to any thing.

Q. What then, was the meaning of your saying to him that you came there upon business, and that you expected that he would treat you gentlemanly?

A. Oh, just for a guard, in case he might make an ungentlemanly proposition.

Q. What put it into your head that he might make such a proposition?

A. Oh! human nature. (Laughter.)

SERGEANT-AT-ARMS. Silence in Court! (Great laughter.)

Mr. KNOWLTON. Q. Were you before the investigating committee last winter?

A. No, sir.

WM. N. SEYMOUR was sworn and examined to Specifications three and nine, of Article seven. (These Specifications are the same, with the exception of the name of the county.)

Q. Are you acquainted with Judge Hubbell? A. I am.

Q. Do you know Wm. W. Wyman? A. I do.

Q. Did you know one Eliza C. Wyman?

A. I knew her once by that name.

Q. Where did she reside?

A. After she married Mr. Wyman, she resided in Madison.

Q. How long ago was that? A. In the year 1849, I think.

Q. Did she live during all that time, with Mr. Wyman?

A. No, sir. There was a short period in which she resided in my house—a space of some two or three days.

Q. Was that while she was yet the wife of Mr. Wyman?

A. She was so reputed to be at that time.

Q. Did you know of any proceedings going on then, in any of the courts of this State, for a divorce between them?

A. No, sir. Not at that time.

Q. Did you subsequently or previously?

A. I understood there was subsequently, but I did not witness them.

Q. While divorce proceedings were going on against her husband, did she reside at your house at all?

A. She was at my house, I met her in the street some two or three evenings before she left Wyman. She said she had been turned out of the house by Mr. Wyman and she wanted to know, if she could come to my house and stay. I told her she could. That was previous to any proceedings to obtain a divorce. She was sick, and confined to her bed, most of the time she was at my house.

Q. During that period of time, was Judge Hubbell at your house?

A. He was, sir.

Q. Was he in the room where Mrs. Wyman was?

A. He was.

Q. At whose solicitation did he go there? A. He went at my solicitation.

Q. Did you inform him for what purpose you wished him to go to your house? A. I did not, sir.

Q. At what time of day was it, that he was there?

A. It was between seven and eight o'clock. I should not think it exceeded eight o'clock. It was directly after we had closed our tea; which was about seven o'clock.

Q. Who escorted him into the room where Mrs. Wyman was?

A. I did myself, sir. I received him at the door, and conducted him up stairs into the room.

Q. During that interview, who else was present, besides yourself and Mrs. Wyman?

A. Col. Atwood and his wife.

Q. Will you now state to the Court, what transpired during Judge Hubbell's presence in that room, and between whom that conversation passed?

A. I introduced him to Mrs. Wyman. We passed the usual salutations of the evening. I placed him a chair and he sat down. At that moment Mr. Atwood and his wife were not in; but they came in immediately, and then all the conversation was between Mr. Atwood, his wife, myself and the Judge. I do not now recollect that there was any conversation between Judge Hubbell and Mrs. Wyman, during his stay there. To the best of my recollection I commenced the conversation. I mentioned the object of our wishing him to call—that Mrs. Wyman wished to be divorced from her husband. I think I asked him if it could be done at Chambers, or in other way than in open

Court. One reason of my asking that question, that Mr. Atwood and I had some conversation the day before, and Mr. Atwood informed me that Mrs. Wyman was opposed to getting a divorce, and one principal object of this interview, was to have Judge Hubbell state before her that it could be done at Chambers, or in some other place than in open Court. Her opposition was on account of the feeling and mortification she would have to suffer, in going before the Court, as I understood, though I did not hear her say anything about it. The consultation between Mr. Atwood and me was to invite Judge Hubbell there. Though what the specific object was, I do not now recollect.

Q. What reply did Judge Hubbell make to your introdnction of the subject matter?

A. The Judge rebuked me pretty decidedly, or I so understood it, for calling him there without informing him what was to be the subject of the visit; and he simply remarked that in reference to that, he had nothing to say about it; that Col. Collins could give me all the information, and he simply remarked that it could be done at Chambers as well as in open Court. I think that was substantially all the conversation that transpired. It is all that I can now recollect.

Q. After this conversation had passed, how long did Judge Hubbell wait before he left the room and your house?

A. Judge Hubbell left very soon after. Perhaps he stayed a short period afterwards. When he left I walked out with him down to the American, and Mr. Atwood and his wife staid behind.

Q. About what length of time do you suppose Judge Hubbell was in your house that evening?

A. He came between six and seven and left my house before it was eight o'clock, or as soon as eight o'clock. He might have been there half an hour, perhaps a little less. I don't think it could have exceeded half an hour. I was there the whole of that length of time.

Q. Well, then, during the whole time that he was in the room with Mrs. Wyman, some one else was present, with the exception of the time it took you to pass down to the door, when Mr. and Mrs. Atwood came in?

A. Yes, sir; and then he was in my eye sight, because I just stepped out of the door, expecting Atwood and wife every moment, and they had nearly ascended to the top of the stairs when I stepped out of the room. It was not more than five or six feet from the room.

Q. Did Judge Hubbell ever have an interview with Mrs. Wyman, except at the time you state?

A. No, sir, not to my knowledge.

Q. Do you recollect whether Mr. Wyman was about your house at that time?

A. At the time that Judge Hubbell knocked at the door, Mr. Ingham, myself and my wife were setting in the sitting room. I remarked to my wife, you need not go to the door, I know who it is and I will go myself. I went out and I think pulled too the sitting room door, tight, so she could not see who it was. I do not think any body saw Judge Hubbell that night, except myself, and those I have stated, who were in the room above.

Q. Do you recollect whether, when Judge Hubbell left, the sitting room door was open?

A. No, sir. I spent some little time at the American, with Judge Hubbell. My wife had not gone to bed when I got home. I did not remember anything more about Mr. Ingham. He did not lodge at my house. He was lodging with Doctor Favill, in his office.

Q. Were you before the Investigating Committee last winter, as a witness?

A. I was not.

Q. Did you have any conversation with the Managers, about being sworn before them?

A. I had understood that I was expected to be called. It was just before I wanted to start for Washington. I mentioned the subject to Mr. Cate, and said if they wished me as a witness, I wished they would call me soon, because I wanted to leave on the Monday following. I think Mr. Cate inquired of me what I knew about it. I think I told him, though perhaps not as much as I have testified to here to-day. I told what the matter was, and what the interview was.

Q. Did he then relieve you from staying any longer?

A. He did not make any remark. In fact I think he did not hear me through. I think his attention was called by some gentleman, and we did not get through the conversation.

Q. Did Mr. and Mrs. Atwood reside in town here?

A. I believe they did, and do.

Q. Do you know of your own knowledge, of their being before the committee? A. I do not, sir.

Cross Examination.—Q. Mr. Seymour, before you brought Judge Hubbell to your house, as you have testified, had you any conversation with him on the subject of Mrs. Wyman's troubles? A. No, sir, not before.

Q. In that conversation with Col. Atwood, did he tell you that he had?

A. He did not tell me that he had.

Q. What did you tell Judge Hubbell you wanted of him?

A. I called on Judge Hubbell, and think I said, "I have a little business for you at my house. I wish you would call down immediately after tea."

A. He said he would. He did not stop to ask me what I wanted of him, and I did not tell him. When I opened the door for him, at my house, I did not tell him, but asked him to walk up stairs.

Q. After that interview, did you have any conversation with him on the subject of Mrs. Wymans troubles?

A. I did not after that evening, and after we left the house, I talked with him more to satisfy him that it was done innocently, if I had been impertinent or saucy. I cannot say that there was any other conversation than upon what seemed to be lying upon my mind, and that was the impropriety of my inviting him to my house, without telling him the object.

Q. Did Mrs. Wyman know of your purpose to bring Judge Hubbell to your house? A. Not to my knowledge.

Q. Then neither of them knew of the proposition to have that interview until you brought them together? A. Not to my knowledge.

Q. Was any thing said in the interview about the grounds upon which Mrs. Wyman sought a divorce?

A. I think that something was said, or Judge Hubbell was asked, what would be necessary or what would be required, either by me or Col. Atwood,

and I am not certain which. I think the Judge's reply was, that "as regards that matter, Col. Collins knew all about it, and what the statute required."

Q. How came he to say Col. Collins particularly?

A. I think the Judge had previously mentioned that we had better apply to him to draw up the bill.

Q. Had Mr. Collins been previously consulted by Mrs. Wyman?

A. That I do not know, sir. Not to my knowledge, and yet she might have done so.

Q. Did you not know that Wyman had been previously applying for a divorce.

A. I did not at that time, sir. I did not know anything about any difficulty, or any matter of divorce, until this particular moment of time.

Q. What did Judge Hubbell say to you, when he rebuked you?

A. I do not know as I can even say the substance of what he said.

Q. Well try and see if you cannot recollect the substance?

A. I will say what the substance was if I can recollect it, and if I can't I won't. I do not recollect it. A man can recollect that he was censured by another, and not recollect the language, or even the substance of it.

Q. Was the language playfully or angrily use l?

A. He did not laugh, sir, nor speak in a funny manner. I thought he was serious in what he said.

Q. Was it said to you?

A. I suppose it was. He was facing me.

Q. Were Mr. Atwood and his wife present? A. They were, sir.

Q. You were sure it was not in the room previous to their coming in?

A. There was no conversation about the divorce, until they got in.

Q. Now, if you can remember all these particulars, and recollect that you went home with the Judge, and recollect of trying to appease his rebuke; and recollect that it was a rebuke; can you not tell us something of the language of the rebuke?

A. I cannot state what it was, I suppose Mr. Atwood will remember.

Mr. Ryan. Well, he is not on the witness' stand now, and you are.

A. I cannot recollect his precise language; but the substance of it was a rebuke.

Mr. Ryan. That is hardly the substance.

A. Well, that is as near as I can recollect it.

Q. Did he say—"Mr. Seymour, I rebuke you?" A. No, sir.

Q. Did he say—"Mr. Seymour, I censure you?"

A. No, sir. He said I had done something wrong in inviting him to my house without telling him the business.

Q. Was Mrs. Wyman on the bed?

A. I think she was in bed and undressed, but I am not sure. He might have asked her if she was sick, or something of that kind.

Q. Was there any rebuke then, Mr Seymour?

A. No, sir; because the business had not been broached.

Q. Did you introduce them as strangers to each other? A. I did.

Q. Have you ever stated that it was you who censured Judge Hubbell, and not that he censured you? A. Not unless I was asleep.

Q. Have you ever, in the streets of Madison, said so?

A. I do not think I have.

Q. If you did you were asleep?

A. If I did, it must have been when I was talking in my sleep.

Q. You stated that you had shut the parlor door, that nobody might see who was coming in. Now why did you desire that nobody should see your visitor?

A. Because I did not want anybody to know that he came there, because it might be construed by some as improper for me to bring him there.

Q. Whose conduct were you under apprehension would be thought improper?

A. Why. It was known to my family that Mrs. Wyman was there sick, and that either Wyman or his wife would be applying for a divorce, and I did not know but it might be thought improper that the Judge should come there.

Q. Do you recollect that evening, of asking Mr. Ingham to go to bed, or to go away?

A. I do not, sir. I never had any conversation with Ingham upon the subject.

Q. Do you mean to say that you undertook to give this account to Mr. Cate last winter?

A. I undertook to tell him as I recollect it.

Q. Do you recollect there mentioning anything about Col. or Mrs. Atwood?

A. I do not now recollect whether I did or not.

Q. Do you recollect mentioning to him that you were present at the whole of that interview? Can you state that you did state that?

A. No, sir. I would not state that I did state it?

Q. Can you tell anything that you did tell Mr. Cate?

A. No, sir; I cannot. I think the subject has been alluded to, even to another member of the committee, perhaps during this session.

Q. Who was it? A. I think it was Judge Barber.

Q. Since last fall have you ever had any conversation with Judge Hubbell on the subject?

A. Yes, sir, and have talked over the subject of that interview with him. I cannot say whether he introduced it or I.

Q. Well, has he given his account to you?

A. No, sir. He has only inquired about the relation of it.

Q. Has he suggested by question? A. Not that I recollect.

Q. Well, was his examination direct, or leading, or cross examination?

A. I think the conversation run in this wise—That he should have me sworn as a witness, and I think I voluntarily went on and stated what I understood the facts to be.

Q. Had you any conversation on the subject with Mrs. Seymour?

A. No, sir.

Q. Did she find any fault with your bringing Judge Hubbell to your house?

A. I do not know that she did.

Q. Well, I wish you would recollect?

A. I do not know what she said to others, but she never found fault with me.

Q. Did she find fault with the interview?

A. I do not know, sir. Not in my hearing.

Q. Which did you desire should not see the Judge when he came in, your wife, or Mr. Ingham. A. Neither of them.

Q. Did you communicate to either of them that Judge Hubbell was coming there? A. No, sir.

Q. Did you afterwards?

A. No, sir. Not that night. My wife might have asked me when I went to bed, if Judge Hubbell was there, and if so, I answered her. I recollect the conversation the next morning at breakfast table.

Q. Did you tell the persons at breakfast who was there the night before?

A. Judge Hubbell's name was mentioned, and I presumed they were joking about it.

Q. Do you not recollect perfectly well that you did not tell who it was?

A. I do not. I recollect of making this remark to my wife—whether it was at the table, or the next time I saw her after breakfast, I do not recollect—that I wished her to say nothing about Judge Hubbell's being there; and it is barely possible that I made it at the table when the boarders were present.

Q. You say Mrs. Wyman took no part in that conversation?

A. Not to my recollection.

Q. Why, then, might not that interview as well have taken place anywhere else, as in that room? A. It might, I suppose.

Q. Well, what was the object of having it in that room while that woman was lying sick in bed?

A. I suppose that she might hear what Judge Hubbell said about the divorce.

Q. Well, she would have believed you or Atwood, if you had told her what the Judge said in an interview in some other place, would she not?

A. I suppose she would.

Q. What then was the necessity of the interview in that room?

A. I don't know why the interview might not as well be there as any other place.

Q. Why did you take pains to have it secret, if all the purposes would have been subserved any where else, or by your solicitations with Judge Hubbell?

A. Well, sir. One object I had in secreting it, was to avoid any false stories or misrepresentations of it.

Q. But I asked what the object was to have it in that room?

A. I supposed the object was, that Mrs. Wyman might hear what the Judge would say.

Q. But you state at the time that she would have believed what you or Atwood would have said if you arranged it. A. Yes, sir.

Q. Well, then, would not it have answered all the purposes to have had the interviewsome where else? A. Perhaps it might, sir.

Q. Why, then, did you not take that course?

A. Well, sir, I cannot say what the motive was at that time.

Q. You stated at one time in your direct examination, that that interview took place between seven and eight o'clock, and afterwards between six and seven?

A. No, sir, I corrected myself, and said between seven and eight. I do not recollect the day of the month, nor the day of the week positively.

Q. Were Col. and Mrs. Atwood in your house when Judge Hubbell came?

A. No, sir. They were expected every moment.

Q. Why did you leave the front door open for them?

A. Well, perhaps, to save the trouble of my going to the door.

Q. Why could not Mr. Ingham or your wife have opened the door for them?

A. I do not know of thinking anything about it.

Q. Was it your habit to leave open your door when you expected friends?

A. The object of opening was, that the door was shut and Judge Hubbell could not have come in, if I had not opened it.

Q. That is quite probable. Now, why did you not shut it, and leave them to their chances of getting in like anybody else?

A. I have stated why.

Q. Was it not a part of your motive to conceal Mr. and Mrs. Atwood's coming there, just as you concealed Judge Hubbell's?

A. No, sir, because they were in the habit of coming in several times a day.

Q. When you came back to the house, were Col. and Mrs. Atwood there?

A. I do not know, only what they afterwards said themselves.

Q. Did you see them again that evening? A. I did not, I think.

Q. Were any questions asked you that evening, by any boarder in your family, as to who came up stairs?

A. I have stated that nobody but my wife and Mr. Ingham knew that any one came up stairs.

Q. Was not that interview on Sunday evening?

A. Well, I cannot say positively, my impressions have been that it was not; but on conversation with Mr. Atwood, I think, perhaps, it was. He has more reason to remember the day and time than I have.

Mr. CATE. You have stated that you had some conversation with me about testifying before the committee. I wish now to ask you to state on your oath, whether you ever in your life mentioned the subject to me, of appearing before that committee?

A. I think I did. I think I saw you in the Assembly Chamber and undertook to tell you what I knew about it.

Mr. CATE. I think you are very much mistaken. Can you recollect the words, or any word?

A. I cannot, sir. I think I talked with you more than once, sir, last winter, about the impeachment case.

Q. Were there any other parties around?

A. It was at your desk. I did not look around to see if there were other persons near.

Q. What did you call on me for?

A. I called upon you as a friend, having a sort of fellow feeling for you, sir; though not in the particular reference to being called as a witness. I introduced the subject about the impeachment, and remarked if I was going to be sworn, I wished to be called upon soon, because I was going to Washington. I left for Washington on Monday morning. I think that was the third day of February.

Q. You had never been spoken to by any member of the committee about being a witness? A. No, sir.

Q. Did you state to me that you knew any thing about it?

A. I said I undertook to tell you.

Q. How much progress had you made?

A. Well, we had not been sitting there a great while when we were interrupted.

Mr. Cate. I very much doubt it.

A. Oh, there is no mistake about it. If you want to swear to the contrary you can do so.

Mr. Cate. If I did swear, I should swear you swore false.

A. Well, sir, I should not believe it. I would not believe you then under oath.

Mr. Cate. Well, that is just what I would not believe of you.

A. You can't intimidate me, Mr. Cate.

Mr. Ryan. You mean in Madison? A. I mean any where.

Mr. Ryan. Your Washington experience didn't intimidate you any, I suppose?

A. I was not very much scared. I got away with my ears.

Mr. Cate. You state that this conversation was previous to the report of the committee? A. I think it was.

Mr. Ryan. Was that conversation with Mr. Cate, before or after I came to Madison?

A. That I cannot say, sir. I do not know when you came.

Q. Had any witness been examined at that time, on the subject of this Wyman matter? A. I cannot say. I saw none, nor heard none.

Q. What was it you said about that, to her?

A. I said, "from what I heard about town, there were to be witnesses examined on that case."

Q. How long was that before you went to Washington?

A. I cannot say how long.

Q. Did not you say it was a week before?

A. I said, perhaps a week, perhaps more.

Q. Can you state positively, the day you went to Washington?

A. I think it was the third of February, but I may be mistaken.

Q. How long before that was it that you had this conversation with Mr. Cate?

A. I do not certainly know.

Q Was it a day before? A. No. sir.

Q. Was it three days before? A. No.

Q. Was it four days before? A. That I cannot say.

Q. Was it five days before? A. I cannot say that.

Q. Was it ten days before?

A. I cannot say that either. It was some little time before I went away.

Q. Had the committee been appointed when you had that conversation?

A. I think they had, so much so, that I knew he was a member of the committee.

Q. Did you know who the other members were? A. Not all of them.

Q. Who did you know of being called upon as a witness in regard to this Wyman matter? A. I did not know of any body.

Q. Now, how came you to know that witnesses were to be called upon that matter?

A. Because it was understood in the street that that would be one of the charges. It was public rumor. I did not hear it from the committee, nor from Mr. Ryan, nor from the prosecutor.

Mr. Knowlton. Mr. Ryan asked you about your Washington experience—I wish to ask you about something quite as appropriate—Did any body ever whip you in the street because you had been lying about them?

A. Not to my knowledge?

DAVID ATWOOD called, sworn and examined upon the same article and specification.

Q. Are you acquainted with Judge Hubbell? A. I am.

Q. How long have you known him?

A. I have known him by sight, since 1840.

Q. Do you know W. W. Wyman?

A. I do. I have known him about five years.

Q. Did you know Eliza C. Wyman, then his wife?

A. I have known one Eliza C. Wyman, who was his wife at one time.

Q. Did you know the divorce proceedings between them?

A. I have known there was a divorce in the case, sir.

Q. Do you know about the time that Mrs. Wyman left the house of Mr. Wyman, and took up her abode with Wm. N. Seymour?

A. Yes, sir. I remember such a time occurring.

Q. While Mrs. Wyman was at Mr. Seymour's, were you at his house, in the room where Mrs. Wyman was, and was Judge Hubbell present on that occasion, or upon any occasion when you were there?

A. I was present in the room at Mr. Seymour's house, where Judge Hubbell and Mrs. Wyman were.

Q. Who else were present at that time?

A. Squire Seymour and my wife.

Q. Do you recollect of any conversation passing between Judge Hubbell and Mrs. Wyman, or any of the balance of the company?

A. There was a general conversation passed between us.

Q. Will you state as near as you can remember, what that conversation was, and all that you remember of passing?

A. I was introduced to Judge Hubbell that evening for the first time; some general remarks, of course, passed as usual upon introduction; the subject matter of the divorce between Mr. and Mrs. Wyman was then brought up, but whether by Mr. Seymour or myself I would not say. At all events, the subject was brought up, and the question was submitted, whether a procedure in a case of divorce could be had other than in open Court. The Judge answered, giving the process how it might be brought about; and, perhaps, the subject of what were deemed causes of divorce in this State was suggested. The question was submitted to him, I think, by myself, whether if such matters—naming them, and I cannot say what they were now—but if such matters could be proven, they would be sufficient cause for divorce. To which the Judge replied, that it was not a proper question for him to answer.

Q. Did he say anything about employing counsel in relation to that matter?

A. He might have said, and I think he did say, that such questions might be answered more properly by counsel.

Q. Do you remember of his naming any particular lawyer?

A. I am not confident that he did. I presume Mr. Collins was the lawyer whom I had intended to employ, if any. At that time there had been no determination fixed upon to apply for a divorce, as Mrs. Wyman had not made up her mind whether she desired a divorce at that time. She left Wyman but a few days previous to that, and had very little care for any thing apparently, for herself nor for any one else.

Q. Did you expect Judge Hubbell there that evening?

A. I was told some time during the day of the proposed interview, by Mr. Seymour. He told me that the Judge would be there that evening, and he requested me to be present. In pursuance of that request I and my wife went there. We went there, expecting Judge Hubbell to be there, though we should have gone at any rate, because we went every evening.

Q. Do you know how that interview was brought about?

A. I had no other knowledge than what Mr. Seymour told me. I had no part in getting it up, except to agree to be present.

Q. Will you state how long Judge Hubbell was there?

A. But a short time. I should say from fifteen minutes to half an hour. Judge Hubbell went away first. Mr. Seymour left the room with him. The room we were in was in the second story; they left the room together, and my wife and I remained.

Q. About what time in the evening was that?

A. I should think it was between seven and eight o'clock. It could not have been later than eight.

AFTERNOON SESSION.

Mr. ATWOOD, continued.

Q. During the interview at the house of Seymour, of which you have spoken, did any conversation transpire between Judge Hubbell and the then Mrs. Wyman?

A. I do not recollect positively of any conversation having transpired between those two persons at all. Mrs. Wyman was quite ill.

Q. Do you know whether Judge Hubbell was acquainted with Mrs. Wyman, or whether he ever saw her, with the exception of that evening?

A. I do not know of my own knowledge, whether he had ever seen her or not at any time previous to that. Six or eight months after that, I think, he saw her at my house—that was entirely accidental, however. The Judge called at my house, not knowing that she was there, and she happened to be there.

Q. I believe you stated once, but I ask it again for fear I may be mistaken—did Judge Hubbell leave that evening before you did?

A. He did. He and Seymour left the room together.

Q. Did you stay there till Seymour returned?

A. I have no recollection of his retuning. He may have returned to his house and I not know it, as we were in rooms up stairs.

Q. Have you, to the best of your recollection, stated substantially the conversation which transpired that evening?

Q. As near as I can remember, I have stated the substance. It is so long since that I cannot remember the whole of it. I suppose Mrs. Wyman is now in Illinois, Winnebago county.

Cross Examination.—Q. You said you came there that evening expecting to meet Judge Hubbell, upon the statement of Seymour? A. Yes, sir.

Q. What did Seymour state?

A. He stated that he had asked Judge Hubbell to call at his house that evening, and that he would like to have me there.

Q. You understood Mrs. Wyman was to take part in the interview?

A. Yes, sir.

Q. Did he state to you, whether or not Judge Hubbell was to be there to see Mrs. Wyman?

A. I do not know as he did; I do not know but he did. I understood that he was to come there and have a conversation. That is what I understood by Mr. Seymour.

Q. When you get to the house was Judge Hubbell in the room up stairs?

A. He was.

Q. Where was Seymour?

A. He was coming out of the room just upon the head of the stairs.

Q. How far is that from the door of the room?

A. Six or eight feet, perhaps.

Q. Was the door of the room opposite it, or facing it?

A. The door of the room was side-wise, or on the side of the hall to which the stairs led up.

Q. In that conversation did you state, or did any one state, Mrs. Wyman's complaints, on which her right to a divorce was claimed.

A. I am not aware that it was stated. There was a statement in regard to whether, if such and such matters could be proved, it would be sufficient ground for granting a divorce.

Q. Do you recollect whether it was stated in that way, or positively, that Mrs. Wyman could prove such and such things? A. I think the former.

Q. Were those things stated, substantially the grievances of which Mrs. Wyman complained? A. Yes, sir.

Q. Was it asserted in that statement, that he had gone off to Minnesota and left her insufficiently provided for?

A. I could not say whether that particular item was stated or not. The full matter which was expected to be proved was not stated. I cannot say precisely what was stated, because the judge immediately answered, it was not proper for him to reply.

Q. I wish you could recollect what was the statement to which he made that answer?

A. I have endeavored to remember, but I cannot remember. I remember his answer distinctly.

Q. What was the subject of conversation for that half hour you say he staid there?

A. Well, sir, it is impossible to call up all that conversation. It turned on various subjects, such as would naturally occur in a congregation of that kind.

Q. Have you any recollection of any conversation, between Judge Hubbell and Mrs. Wyman?

A. I have not. I am not positive that there was a word said. The conversation was almost exclusively with the rest of us in the room.

Q. You do not remember whether Mr. Seymour was back when you left?

A. I do not. We probably staid an hour after.

Q. Did you, as you went away, go into Mr. Seymour's sitting room?

A. I think not. I could not say positively; but I presume we went immediately out to our own residence.

Q. Did you see Mrs. Seymour as you went out? A. No, sir.

Q. Did you see Mr. Ingham? A. Not that I am aware of.

Q. Did Mr. Seymour give you any caution about not mentioning the interview?

A. I have no recollection that he did. He never has to my knowledge.

Q. Was any thing said during that interview that evening, about an interview having occurred between Mr. Wyman and Judge Hubbell?

A. I do not think there was. I have no recollection of it.

Q. Do you know whether, at that time. Mr. Wyman was himself threatening proceedings for a divorce?

A. I am not positive. I am aware he was contemplating something about it at that time.

Q. I believe you stated that that was Sunday evening?

A. I do not know that I have stated it, but I believe it was Sunday evening.

Q. Do you recollect how long court had been held here at that time?

A. I do not. It had been held certainly one week, I think; but whether the term had closed or not, I am not confident.

Mr. KNOWLTON. Were you related in any way to this Mrs. Wyman?

A. She is a sister to my wife.

Mr. ARNOLD. Were you and your wife residents here last winter, while the committee were in session? A. Yes, sir.

Q. You could at any time have been introduced before them?

A. I was not at any time out of the corporation, I believe.

A. L. COLLINS called and examined on the same article and specification.

Q. Were you the attorney of Eliza C. Wyman on the action of her application for a divorce from her husband? A. Yes, sir, I was.

Q. Had you any knowledge of any collusion between the parties in the application for a divorce?

A. I never heard of any collusion in relation to the application for the divorce.—There was an agreement, as I was informed; it was made between the counsel for Mr. Wyman and myself, in relation to what should be the alimony which should be allowed, in case a decree was granted. That was the first I ever heard of any agreement or understanding in the case. As to the application for the divorce itself, I never heard of any collusion.

Q. Were the proceedings in that case conducted, so far as the case was concerned, and the Judge was concerned, as proceedings usually are, in proceedings of that kind?

A. So far as I know, they were. I pursued precisely the same course that I have and do, in cases of the same character. I took my orders and all my papers regularly, and in the ordinary course.

Q. Where was the final decree granted?

A. In Milwaukee county. All the proceedings were there, I believe. I have not seen the record, nor thought any thing about it since. I believe the record showed that the decree was in the hand writing of the Judge.

Q. Do you recollect how that happened?

Mr. RYAN. Are not the order to take proofs and the decree, in Judge Hubbell's hand-writing?

A. I do not recollect whether I drew the order or not. I recollect of giving him the papers, and it proved that that was not among them. Judge Hubbell does a great deal of writing that lawyers ought to do.

Mr. ARNOLD. That is just what I was going to ask you, if Judge Hubbell is not in the habit of helping out the lawyers a great deal?

A. I have often made the remark that if I was Judge Hubbell I should not write so much for lawyers. It is my habit to write my own papers, and I do not know now, why I did not in this case. About the decree I should say that I did not expect to argue the case, and I sent the papers down by Mr. Tappan, who was then reading in my office, and not knowing exactly what the decree was to be, I left that for the Judge.

Q. It has been testified by George B. Smith, that nobody really knew where the petition was filed or where the proceeding commenced. Was there any difficulty about knowing where it was pending?

A. No, sir. Mr. Smith had nothing to do with it. It was commenced before we became partners. I presume he might answer in the same way as to many other cases in our office, because I conducted a good many cases without his knowing about them. I recollect of being inquired of lately by somebody, where that case was commenced, and I replied as I reply now, that the proceedings were commenced in Milwaukee county. The papers were filed there, and all regular proceedings were had there.

Q. I will ask you a question, I have asked some one else; whether under the Territorial Statutes, proceedings for divorce could be instituted in any county in the Territory?

Mr. Ryan. That is a question of law, which I contend he cannot answer.

Q. Well, what was the practice?

Mr. Ryan. I object to the practice too.

Mr. Arnold. It is proving what the practice is, and you can show what the law was.

Mr. Ryan. I object to the question.—We suppose the proper county where a divorce suit, like any other suit, was to be brought, is a question of law. The Statute in force at that time, will settle the question. I do not propose now to discuss that question, nor even to settle it. We take the position that no practice can be given in evidence to change or affect that law or that fact, which is here given in evidence of this divorce, having traveled out of the county where the parties lived. I suppose it is utterly immaterial to prove what the practicewas. The question is, whether they had a legal right to go out of the county to institute proceedings.

Mr. Knowlton. I do not understand that the question before the Court is, what the law was. That is not the question here. As a matter of course that question is involved, but it is not for this Court to decide. The decision which is called for at the hands of this Court, is, what was the intent of Judge Hubbell in the particular case which we are considering. Now we contend that it is proper to put this question, because it is a rule acknowledged by all lawyers and courts, that the practice under a Statute, goes very far to settle the construction of a Statute. It shows that it has been acquiesced in a series of years without objection, and so far as the question of what construction the Courts have applied to the Constitution, it is not confined to statutory provisions, but it goes to constitutional law; therefore it is very proper to ascertain what the practice was, because if this proceeding was in accordance with the common practice it negatives the idea that it might be inferred that it was, in fief of statutory provision. It is then the intention of the act that Judge Hubbell has done, upon which the decision of this Court is asked.

The question reduced to writing was submitted as follows:

What was the practice under the Territorial Statute of 1839 on the subject of divorce as to the county in which a suit might be brought? Was it the practice to bring such suits in any county in the State, that the applicant might choose?

And the question, "Shall this interrogatory be put?" was decided unanimously in the affirmative.

A. I think the practice was different in different circuits, as the Judges differently construed that law. In Judge Hubbell and Judge Larrabee's circuit, the practice was to file the papers in divorce cases in any county. I have no distinct recollection what the practice was under the Territorial Courts; but I have a recollection that the practice was so in Judge Hubbell and Judge Larrabee's circuit; that was my understanding of the practice, although I did not exactly construe the law so. That was the practice, and I know the Judges held so.

Q. Did Judge Hubbell ever talk with you in regard to you acting as counsel for Mrs. Wyman? A. No, sir.

Q. Did he never solicit you to act as such counsel?

A. No, sir. I was solicited and employed by Mrs. Wyman herself.

Q. Had Judge Hubbell anything to do so far as your knowledge extends, in regard to suggesting or fixing the venue of that suit.

A. No, sir. He had nothing to do with suggesting it, but he had something to do with fixing it. It was under my direction and with the sanction of Mrs. Wyman.

Cross Examination.—Q. Do you recollect being asked last winter, during the session of the legislature, where the county of that proceeding was?

A. I do not recollect being asked the question.

Q. Do you recollect saying that it was in Jefferson county?

A. I do not recollect being asked the question.

Q. Do you not recollect being asked if it was in Milwaukee county?

A. No, sir.

Q. Do you not recollect being asked where that decree was, and you replied that it was either in Jefferson or Dane county, and that the office of the courts in Jefferson and Dane counties were searched and there was no decree there?

A. I do not recollect now.

Q. Do you remember being in my office in Milwaukee on one occasion, and I asked you where that decree could be, saying that it was not in Dane county, it was not in Jefferson county, and I wonder where the deuce it could be?

A. I do not.

Q. Do you recollect of telling me to inquire in Milwaukee county?

A. I do not recollect anything about it. I may have answered such a question in a fit of absence of mind, but I do not recollect it now. I do not recollect the conversation to which you allude.

Q. Why was Milwaukee county selected as the county where that petition was to be filed?

A. I think it was because Mrs. Wyman wished to get her case through as quick as she could, for reason, I suppose, pertaining to herself. Our spring term came some time after that at Milwaukee, and it was fixed there to expedite the proceeding.

Q. The decree was actually given in Chambers, was it not?

A. I think it was.

Q. At that time was not the Supreme Court to sit here in January?

A. That I do not recollect; I do not recollect when the decree was entered.

Q. The decree was entered in September. Now, was not the Supreme Court to be in session the first Tuesday or so in the the following January?

A. Well, that is a question of law too, and, perhaps, of fact. I suppose it was one or the other.

Q. Then was not the prospect just as good for getting it through rapidly in this county as in Milwaukee. Was that difference of time material?

A. I cannot say how material it was to the applicant. The object, I said, was to gain time; but whether it was an object to gain three or four days at that particular period, I cannot say. I cannot state any conversation about it, only that these were my instructions.

Q. Did you take the testimony before G. B. Smith, as commissioner, for Mrs. Wyman?

A. I think I took the testimony of one witness, Doctor Lull; but whether I took any more testimony I am not certain.

Q. Had she any other counsel than yourself? A. I know of no other.

Q. Was that testimony forwarded to the clerk of Milwaukee county?

A. I should think from my habit of doing business that it was. I think I forwarded it by Mr. Tappan, who took all the papers along with him to Milwaukee; but I could not swear certainly. My recollection upon that point is indistinct.

Q. Will you look at that envelope? whose writing is that?

A. I think that is the handwriting of Geo. B. Smith. That is his address; but there is something entitling that suit which I should think was not his hand-writing.

Q. Having looked at that envelope won't you state whether that testimony was not sent directly to Judge Hubbell.

A. That envelope is addressed to Judge Hubbell, certainly.

Mr. RYAN. Well, I gave you that as a reminder.

A. Well, I could not swear. My impression is that I sent it to the clerk; but I have no recollection of that act at all. I only say so from my habit of doing business.

Q. Didn't you not understand when you commenced that suit that there would be no opposition to it?

A. No, sir. I don't think I had any such understanding. I don't recollect of any. In fact, I know I had no such understtnding.

Q. Do you remember that Mr. Smith being your partner, and acting as commissioner, had any scruples about it?

A. I do not recollect, sir, there may have been something said about it; but I do not recollect now any thing of that kind. He was not a partner in this proceeding. This was a matter of business I had on hand, before we entered into partnership, and by our stipulation and understanding it did not become partnership business. He was not in fact interested as a solicitor in that cause.

Q. When did your partnership commence?

A. I think in July of that year.

Q. Was not the whole flare up between Mr. and Mrs. Wyman during the fall term of that year?

A. Oh no, sir. I had been consulted first by Mrs. Wyman as early as March in that year. The first I ever knew or suspected about it, Mrs. Wyman sent for me to call upon her at her house. I cannot tell when their separation took place; they were then living together in the house where I called. I saw Mr. Wyman there that day and hour. During the summer, I think, Mr. Wyman went up to Minnesota.

Q. Were the causes for divorce set forth in that petition, subsequent to your partnership with Mr. Smith? A. I should think not.

Q. Were they proved after that?

A. I cannot say. I know I was retained in this business as early as March in that year. Our partnership, I think, took place in July of that year.

Q. You did not go to Milwaukee when the decree was obtained?

A. No, sir.

Q. Who would have argued the case on the part of Mrs. Wyman if there had been opposition to the decree?

A. Well, I do not recollect now, and for this reason, that no provision was made for argument, because at the time the papers were sent, there was an understanding that there would be no opposition. As I have said, Mr. Abbott or Catlin—I think Catlin, and perhaps it was both of them, knew in relation to it. The counsel had an understanding that there would be no appearance, no objection, and therefore, I did not expect there would be any occasion for any body to argue the case.

Q. Where was it that you obtained the order to take proofs in the case?

A. At Jefferson, I think, sir.

Q. At the term of the Jefferson Court, immediately succeeding the Dane County Circuit Court?

A. Yes, sir, it was that fall that Mrs. Wyman requested me to go on with the proceedings, having been previously retained.

Q. That was the same fall she left her husband's house, and went to Mr. Seymour's house?

A. I think it was.

Q. How was that order to take proofs sent to Milwaukee?

A. I do not know. I should judge from my habit of doing business, that it was sent by mail to the Clerk of the court, but I could not swear to that.

Q. Where was the petition when the order was granted?

A. Well, I could not say, but it would be my impression that I had the petition with me.

Q. Were you not obliged to have it to show something to get the order on?

A. I should think so.

Q. How came the bill and the order to be of the same date?

A. I cannot account for that, except upon the principle that one or the other made a mistake in the date.

Q. Do you recollect a memorandum endorsed on the back of the petition, in pencil. Filed, Oct. 31st?

A. I do not recollect any memorandum of that kind. I probably mailed the order and paid the postage, to the Clerk of the court; but I have no recollection of doing that thing, not the least, only from my habit of doing business.

Q. Do you recollect the length of notice that the Statute required for proof to be given? A. I do not recollect.

Q. Was any other notice of any kind served on Mr. Wyman, except that order to take testimony?

A. I cannot now remember of any. I do not recollect distinctly of serving any paper upon Mr. Wyman.

Senator STEWART. What does the record show? Does it show a subpœna?

A. The old statute required no notice.

Mr. RYAN. That is a question of law.

A. Well, I say that as a lawyer.

Q. Was Catlin, you or Abbott present when were taking depositions?

A. I do not recollect that they were.

Q. Do you not recollect that they were there to see that you did not give proofs outside of the petition, but making no opposition to proofs made within the petition?

A. I do not remember that they were there at all. Your question does not refresh my recollection upon the subject. I cannot remember now that they were there at all. I think the depositions were taken at my office.

Q. Do you not recollect that you directed Mr. Smith to forward these depositions by Mr. Tappan, to Judge Hubbell?

A. That may have been the case, but I have no recollection upon the subject.

Q. Did you not examine other witnesses besides Dr. Lull?

A. I might recollect other witnesses upon their names being called.

Q. Do you recollect examining ——— Oakley, or Susan Jane Oakley?

A. I do not recollect examining either of them myself.

Q. Margaret Gallard? A. I think I do recollect of examining her, now.

Q. Do you recollect George P. Delaplaine?

A. No, sir. I recollect examining the servant girl, because I recollect the subject matter of her testimony.

Q. Do you recollect writing a letter from Jefferson county, to the Circuit Court, of Milwaukee county in relation to that suit?

A. No, sir. I do not recollect distinctly of writing any letter.

Q. Well, sir, let us see; whose is that hand-writing? (Showing a letter.)

A. That is my hand-writing, sir. I should, however, have stated, that I probably did write when I sent the papers, and I probably gave some directions to the clerk.

Q. Can you recollect now since looking at that letter, how the filing of the bill, and the date of the order, came to be of the same date.

A. I do not recollect.

Q. How did you happen to direct them in that way?

A. I do not recollect. There was probably a reason which governed my mind at that time, but I cannot say how it happened. It appears that I did direct them in that way.

Senator BLAIR. Who employed and paid you for obtaining the decree of divorce for Mrs. Wyman?

A. Well, Mrs. Wyman both employed me and paid me; though perhaps I should explain that the money did not come to me through her hands; but I believe, and think I know, that it was her money.

Senator ALBAN. Was it not held by Judge Irvin under the Statute of 1839, that a bill or petition for divorce, could be filed in any county in the

Territory; and do you not recollect that a petitioner, in the case of Roe against Roe, lived in Portage county, and appeared before Judge Irvin in Dane county, with his petition and a divorce was granted?

A. That was Judge Irvin's practice, I believe, and I recollect the case mentioned. I was at a loss first, to recollect whether the petition was filed in Portage county or in Dane county; and I cannot recollect positively now, whether it was in Portage or Dane county. I know the defendant lived in Portage county. It must have been seven or eight years ago that I had that case. I would not be positive that it was heard in Dane county, though that is my present impression.

Mr. ARNOLD. You have been asked how it happened that this order for taking testimony, which was made at Jefferson, was filed Oct. 31st, and the bill which was filed in Milwaukee, was of the same date, and you could not explain. You were also asked as to the precise mark on the back of the order. I find by reference to the petition and order, that there is some pencil mark on each. I will ask you whose hand-writing that penciling is, and whose initials are signed to it.

A. I should call it the hand-writing of Judge Hubbell, and "L. H." are his initials.

Q. Now, does not this explain, that after having been at Jefferson, it was the direction of the Judge to file them both at the same date, and that the order should be granted at one date. Was it not the design of the Court to have them both filed in Court as of the same date?

A. That I think was the design. That is evidently the design, but I do not speak of it from any recollection at the time.

Mr. RYAN. That is judgment and not memory.

Mr. ARNOLD. Is the order dated 31st October?

Mr. RYAN. It is.

Mr. ARNOLD. Well then, that explains satisfactorily the reason of that direction.

Mr. RYAN. The witness says he has no recollection about Mr. Arnold.

Witness. I am inclined to think that that date was anticipated in both cases; that the order was really made out a day prior to the 31st of October, and that I did not forward them for perhaps a day or two; but of that I am not certain. I think I might refresh my memory by a diary which I carry, and by which I prove an *alibi* sometimes.

Mr. ARNOLD. You have been inquired of by Mr. Ryan, with a view to refresh your memory as to some interview you had in Milwaukee. When was that interview with Mr. Ryan?

A. That I could not say certainly; I think it was about the middle of February.

Q. Was it before or after the session of the Committee, who made the report upon the impeachment to the Assembly?

A. I think it was during the Session of that Committee.

Q. Was it before or after Mr. Ryan came out here to act as counsel in that Committee? A. I think it was before.

Q. It was before that then, that he was inquiring where the papers in that case were? A. Yes, sir.

Mr. RYAN. Was it not during the session of the United States Court?

A. I was in your office but once while I was there. I think I never did enter your office till the session of the United States Court in April. I do not recollect the conversation at all, however. The conversation must have been at that time, if there was any conversation.

Q. Do you not recollect that we walked up to the United States Court together.

A. No, sir. I recollect of going up to your office one morning and scolding you for having so many stairs to reach your office.

Q. At what period of the divorce suit was it that you met Catlin or Abbott, and had the conversation about the alimony?

A. It was about the time of the decree. It must have been, because I think we signed a stipulation. I do not know whether it is among the papers here or not.

Q. There is no stipulation here about alimony?

A. Well, it was done here at home, and it was to this effect—that if the decree should pass into force, the alimony was agreed upon by the parties to be fixed at a certain sum.

Q. Can you recollect about what time in the proceedings it was?

A. No, sir. I cannot recollect to fix it by day or date. I can only fix it by comparison of one period with another. It was within ten days, I think, of that decree, that this stipulation or understanding was had; and when I say stipulation, I do not know that there was a contract signed by both parties; but it was expressed some way in writing.

Mrs. Atwood, sworn and examined.

Q. Are you acquainted with Judge Hubbell? A. I am, sir!

Q. Do you know the lady who was formerly Mrs. Wyman?

A. Yes, sir! she is a sister of mine.

Q. Do you recollect the occasion of her separation from Mr. Wyman, and when she went to Mr. Seymour's to stay a few days; about what time was it?

A. I recollect the occasion; it was four years ago this coming fall.

Q. Do you recollect any interview between Judge Hubbell and her while she was at Mr. Seymour's house on that occasion.

A. I do recollect of meeting the Judge there one evening.

Q. Who were present?

A. Esquire Seymour, my husband, myself and Mrs. Wyman.

Q. How long did that interview last—how long was the Judge there?

A. I should not think to exceed twenty minutes.

Q. Can you state what the conversation was about?

A. It was on the subject of her separation from her husband. There were various subjects talked of.

Q. Do you recollect of any question being asked, whether by your husband, or by Mr. Seymour of the Judge in regard to whether a divorce could be granted, if such and such facts were proven.

A. I have no recollection of any such question.

Q. You cannot state the conversation that did take place?

A. No, sir.

Q. What was the condition of Mrs. Wyman? A. She was sick in bed.

Q. Did you remain there after the Judge went away? A. I did.

Q. Who went away with the Judge?

A. I do not recollect that any one did. Mr. Seymour did go out at or about the time the Judge did. It was early in the evening that the interview took place.

Cross Examination.—Q. Who was at the house first, yourself or Judge Hubbell? A. Judge Hubbell.

Q. When you came to the house, where did you first see Mr. Seymour.

A. At the head of the stairs, just leaving the room.

Q. Did you see him leave the room. A. I did, sir.

Q. Was the subject of Mrs. Wyman's complaint against her husband talked over in that interview.

A. Yes, sir, It was mentioned; but there was very little conversation about it.

Q. Were her complaints against her husband there mentioned by any body?

A. I do not recollect that they were.

Q. Do you know what the object of the meeting was?

A. In what respect—my going there.

Q. Well, your going there, and your husband's going there, and Judge Hubbell's going there. A. I do not know.

Q. Had you any knowledge that you were to meet Judge Hubbell there?

A. I had not.

Q. Had you known Judge Hubbell previously? A. I had.

Q. Had you ever any previous conversation with him on the subject of Mrs. Wyman's troubles with her husband? A. No, sir.

Q. How came you to go there at that time?

A. She was my sister, and I was in the habit of going there very frequently.

Q. Then you did not go upon any appointment that you know of at the time to meet Judge Hubbell? A. I did not.

Q. Was there any explanation given to you when you got there of how he came to be there?

A. Yes, sir. My husband told me that Seymour had invited him there.

Q. Was that said to you in the room when you were all together.

A. Yes, sir.

Q. Was the subject of divorce the principal subject of conversation while you remained there?

A. I do not recollect that it was.

Q. Do you recollect of Judge Hubbell finding fault with his being invited there by Mr. Seymour? A. No, sir.

Q. Did you perceive any irritation on Judge Hubbell's part towards Mr. Seymour? A. I do not recollect that I did.

Q. If Judge Hubbell had found any fault with his being asked to come there, would you not be very likely to recollect it?

A. Well, I don't know that I should. It has been a long time since, and I did not charge my mind with it.

Q. Would not the circumstance of his finding fault with Seymour, for bringing him there, be more likely to impress itself upon your mind, than the precise place you first saw Seymour, upon coming into the house?

A. I do not know that it would.

Q. After that interview, had you any conversation with Judge Hubbell, upon the subject of Mrs. Wyman's divorce? A. No, sir, I had not.

Q. Who was in the room when you entered it?

A. Mrs. Wyman and Judge Hubbell were the only persons in the room when I entered it.

Q. Did you see Mrs. Seymour that evening.

A. I did not. I passed straight up to Mrs. Wyman's room.

Q. Did you know where Mrs. Seymour was. A. I did not.

Q. Do you recollect whether the front door of the house was open or shut, when you came there. A. I do not recollect.

Mr. CHARLES I. KANE was sworn and examined, to Article four, Specification one, five and six.

Q. Mr. Kane, where do you reside. A. I reside in New York.

Q. Where did you reside from 1845, up to a year or two ago.

A. In Milwaukee.

Q. When did you leave Milwaukee. A. I left in the spring of 1851.

Q. Do you recollect a certain suit in chancery pending, at any time in the District Court of Milwaukee county, in which Parsons & Lawrence were complainants, and yourself, Cogswell and others were defendants. A. Yes, sir.

Q. Do you recollect the suit in chancery of Calvin W. Howe and others, against yourself and Cogswell. A. I do.

Q. The suit of Parsons & Lawrence against you, was a creditor's bill on a judgment against Cogswell. Was it not. A. I understood it so, sir.

Q. The second was a bill to set up, and establish a partnership between you and Cogswell. A. Yes, sir.

Q. I wish now to ask you the question, whether, in these suits, or either of them, or in any of the matters out of which they grew, Judge Levi Hubbell was employed as your counsel. A. He was not employed by me.

Q. I meant employed by you. Do you know whether or not he was the counsel of George Cogswell, in the Parsons and Lawrence suit. A. He was.

Q. In that suit, did you make an answer. A. I did.

Q. Who drew that answer. A. Levi Hubbell.

Q. How happened that. Please state the circumstance.

A. When that bill was filed, sir, I did not propose to employ a lawyer. I considered that there were only one or two questions to settle, that is, whether I had any property in the hands of Mr. Cogswell, or whether I owed him anything. Mr. Hubbell said that Mr. Cogswell would have him draw my answer.

Q. You may state any act you please in regard to the filing and drawing of that answer, and swearing to it. You say that Cogswell said he would get Hubbell to draw it. Did he do so.

A. He did. I considered it his suit altogether, and not mine; and I did not wish to employ counsel to defend it.

Q. What did Cogswell do in regard to getting that answer drawn. Who brought it to you. A. Cogswell brought it to me.

Q. What did you do with it, after he brought it to you.

A. I swore to it.

Q. Was the answer of your father, brother, and Mr. Church, all embraced in the same paper. A. Yes, sir.

Q. After it was sworn to, what did you do with it.

A. I think I gave it to Mr. Cogswell again, sir.

Q. In any of these suits, in which Cogswell was a party, was Judge Hubbell ever employed by you, and did you ever pay him.

A. No, sir. I never either employed him, or paid him.

Q. Did he ever call upon you for pay for service, in that suit of Parsons & Lawrence. A. No, sir.

Q. I understood you to speak of one suit, in which you did employ Judge Hubbell. What suit was that.

A. It was a suit against Jason Downer, in which he swore out an attachment. I went to my counsel to commence a libel suit against him. They were so situated that they did not want to do it, and I got Gen. Hubbell to draw the papers.

Q. In whose hands did that suit ultimately fall.

A. It was disposed of by J. E. Arnold.

Q. At that time when this suit of Parsons and Lawrence was pending, and previous and subsequent to that time, who were your regular counsel?

A. At that time it was Tweedy & Crocker. When they dissolved, it was Crocker & Holiday, and so I followed the firm down to the present time.

Q. I will ask you now generally, if you are perfectly clear that in all these matters in which Cogswell was a party, Gen. Hubbell was never employed by you nor paid by you?

A. I have no recollection of ever employing him, and no recollection of ever paying him.

Q. Do you know Henry P. Hubbell? A. I do.

Q. Is he your partner? A. He is.

Q. Where is he now? A. He is in New York.

Q. Did you and he receive a joint telegraphic despatch last week, or the week before, advising both of you to come here immediately? A. Yes, sir.

Q. Why did not Henry P. Hubbell come.

A. Well, we could not both very well leave at once. Mr. Hutchins, the gentleman who is with us, was in in the West and had not returned yet. He was to come as soon as Hutchins returned. We could not very well shut the store and all come.

Q. After the commencement of the suit of Calvin C. Howe and others in equity, who were your counsel.

A. Well, I had quite a number. I had Mr. Brown, Mr. Ogden, Mr. Ryan, Mr. Arnold——(witness hesitating.)

Mr. Ryan. Go on, Mr. Kane, and finish the list.

Witness. Mr. Watkins and Mr. Holliday.

Q. Holliday was in company with Brown, was he not.

A. Yes, sir.

Q. Do you recollect several appeals to the Supreme Court, on interlocutory orders, or decrees in that suit. A. Yes, sir.

Q. Do you recollect the last which came up here, and was argued in the December term 1851, and partially re-argued in June of last year.

A. I recollect its being decided here.

Q. Were you here at Madison, during the June term of 1852. A. I was.

Q. What counsel argued the appeal for you at that term.

A. James S. Brown.

Q. Who argued it at the December term previous.

A. I think it was Mr. Brown and Mr. Ryan.

Q. Did Judge Hubbell sit upon the bench at the June term, when you were here. A. I believe he did.

Q. Do you know whether or not your counsel, Mr. Ryan, then thought Judge Hubbell was competent to sit upon the bench in that case, and whether he urged that he should do so.

A. Whether he urged—who, sir?

Q. Urged the Judge.

A. I do not know whether he urged the Judge. I know he thought he could and should sit.

Q. Do you know whether he was extremely desirous.

Mr. Ryan. I wish you would ask the witness what I said.

Witness. I could not tell the conversation; it varied very much. They were very frequent, and a good many of them. I got the idea very distinctly from Mr. Ryan, and Brown and Ogden, that there was no objection to Judge Hubbell sitting in that case at all.

Q. Did you derive from him any special reason why Judge Hubbell ought to sit, and why he was anxious he should sit?

A. Yes, sir. It was that I might get the benefit of what he said belonged to me, inasmuch as I had law on my side, I should have the benefit of it, and should have Judge Hubbell sit then, in order to have the benefit of it.

Q. Well, that remark unexplained, might not be understood. I will ask you if there was anything said of the supposed or fancied position of another Judge, which made it desirous that Judge Hubbell should sit upon the bench in that case? A. I understood it so, sir.

Q. When did Henry P. Hubbell form his business in connection with you?

A. In September last.

Q. Had Judge Hubbell anything to do directly or indirectly in regard to that connection? A. No, sir.

Q. Has he any interest, or did he ever have in that arrangement?

A. I do not know that he ever knew anything about it, until I called upon him to consult with him about it at the request of Henry P., and to make arrangements satisfactory to him and his friends.

Mr. Knowlton. You have stated that you never employed Judge Hubbell in any case where you and Cogswell were partners together. Now, did you ever direct any person whatever to employ Judge Hubbell for you in any such suit?

A. I have no knowledge that I ever did.

Q. Did you ever request any person to pay Judge Hubbell for any such services in any such suit for you? A. No, sir.

Q. Were you present in Court at the June term, when the case of Howe against you and Cogswell was on trial, or previous to the December term of '51?

A. I do not think I was in Court at all until the June term of '52.

Cross Examination.—Q. You say that you did not consider that you had any stake in that suit after two or three questions were settled?

A. I said so.

Q. Did you ever employ any body to attend to that suit for you?

A. I do not think I did.

Q. At the time that bill was filed, Cogswell had very recently made a sale of goods to you, had he not?

Mr. ARNOLD. Wait a moment, Mr. Ryan.

Mr. RYAN. I guess you won't have any thing to object to.

Mr. ARNOLD. Well, go on. We will see what you are coming at.

A. I think it was about a year previous.

Judge HUBBELL. It was more than that as the figures show.

Mr. RYAN. I have got that bill before me, and I want to read you a part of it to see if you can then say whether you had any interest in that suit.

(Mr. Ryan read the passage alluded to.) In that part of the bill do you consider that you had no interest.

Mr. KNOWLTON. Do you maintain that that is a proper question in cross examination.

Mr. RYAN. I think it is perfectly proper.

Mr. KNOWLTON. We did not interrogate the witness upon any thing of the kind.

Mr. RYAN. If the Court please, the witness has stated that he did not employ Judge Hubbell, or anybody else, in this suit. That he thought it was Cogswell's suit, and that he had nothing to do with it, with the exception of settling one or two questions; and that it was Cogswell who procured Judge Hubbell to draw Kane's answer. Now, I want to show by a cross examination of this witness, that the suit was his, and that he had a deep stake in it.

Mr. ARNOLD. I did not ask him in relation to that. That was an answer of his own. He said he had not employed Judge Hubbell in that suit, and then went on to give the reasons.

Mr. RYAN. You asked him whether he employed Judge Hubbell.

Mr. KNOWLTON. That has nothing to do with the minutiæ of the bill.

Mr. RYAN. I think it has a good deal to do with it. I propose to show by cross examination, that he knew it was a suit in which he had a deep stake, and as deep as anybody.

Mr. ARNOLD. For what purpose?

Mr. RYAN. For the ordinary purpose of cross examination.

Mr. ARNOLD. What is that ordinary purpose.

Mr. RYAN. To shew that he did employ counsel, or to throw discredit upon his testimony. I have given the other side great latitude, I have let them put me upon trial.

Mr. KNOWLTON. We have indulged you as much as you have us.

Mr. RYAN. Yes. But you cross examined our witnesses on the whole subject, by and large.

Mr. ARNOLD. Certainly, and you opened the door for it.

Mr. KNOWLTON. The respondent says he has no objection to their taking that course, and we will withdraw the objection.

Witness. I considered that that debt was against Mr. Cogswell and was to be collected against him, and the filing of that bill was not for the collection of that debt against me. I understand that in the filing of all bills of that kind, men set up what they please. I merely state that to show you how I understood that bill. As far as my interest was concerned, I did not consider that what he set up in that bill made me holden for that debt at all.

Q. But did you not consider that you had an interest in the question.

A. I did not consider that there was much of mine in answering that bill, inasmuch as I had made the purchase, and made the payment upon it.

Q. Well, then, had not you a greater interest in defending the purchase.

A. I did not consider it so.

Q. Do you mean to say that you felt no interest in such a suit which was brought to impeach a sale of goods to you, to the amount of a number of thousand dollars. A. Certainly, if it impeached that sale.

Q. Well, does it not.

A. It sets it up, but it don't prove it by any means.

Q. Did you not understand that this suit of Parsons and Lawrence, against you and Cogswell, was a suit brought to impeach that sale, as being fraudulent against Cogswell's creditors. A. I do not think I did.

Q. Did you ever read the bill? A. Yes, I think I did.

Q. Did you read it before your answer was filed? A. I think I did.

Q. Did you read that part of it which I read to you?

A. If I read the bill, I must have read that part. Those bills look to me different, perhaps, from what they ought to. They look like setting forth fraud in various ways, that are often stricken out by the Courts, and I did not understand that as being of very great importance, so far as the breaking up of that sale was concerned.

Q. But Howe and others sought to break up the sale.

A. They sought to make out a partnership.

Q. Yes, but they sought to break up that sale, as void against creditors.—Did you leave that to Cogswell, to employ counsel for you?

A. No, sir. That suit I understood to be altogether different; that was an attempt to make me pay Cogswell's debts.

Q. Did they not also seek to impeach that sale?

A. I should presume they did.

Q. Well now, at the Supreme Court, in 1850, they deccided that that bill was good only as a creditors' bill, but not good to make you liable as a partner.

A. I think so, sir.

Q. Well then, did you cease to employ counsel in the matter on that account.

Judge HUBBELL. Is that the decision?

Mr. RYAN. That is what I understood it to be. I recollect what the Supreme Court decided, because I have read it with a great deal of edification, a great many times. They found it hard work, but they finally did sustain it as a creditor's bill, and all that part that set up a partnership, they regarded as surplusage.

Q. You still continued to defend that suit when it became a creditor's bill. How did it strike you differently—the mere bill of Parsons and Lawrence, and the Howe bill, after the Supreme Court had decided it good, only as a creditor's bill. How did you regard your interest as affected by those two bills.

A. Well, I went to Mr. Tweedy, and talked to him about this bill, and told him how I had made the purchase. He told me the Parsons and Lawrence bill would not amount to anything.

Q. Did he tell you not to defend it.

A. No, sir. He told me I would have to put in an answer.

Q. Did he tell you what part of the bill you would have to answer.

A. I don't recollect.

Q. Did he tell you that the sale was impeached in that bill, and that it would be necessary for you to defend the sale against the bill.

A. I don't recollect whether he did or not.

Q. Did you and Cogswell ever consult Judge Hubbell, on the subject of that sale.

Mr. ARNOLD. That is not cross examination; but you may ask the question.

A. Not to my recollection.

Q. Can you state positively, one way or the other? A. I cannot.

Q. Are you able to state that you did not consult Judge Hubbell, on the subject of that sale, about that time? A. I have no recollection that we did.

Q. Did you consult him about the time the attachments were about to be issued, or shortly after.?

A. I might have done so. I went to Judge Hubbell's office, after the sale was made. I cannot tell how long after, probably during the time of answering this bill. I do not know but I went there right away after this bill was answered, and I think also before.

Q. Did you and Cogswell ever consult Judge Hubbell, on the subject of that sale from Cogswell to you? A. We might have done so.

Judge HUBBELL. I wish you would recollect, before you say you might have done so.

A. Well, I do *not* recollect that he did.

Q. You say you went back and forth, to Judge Hubbell. What did you go about?

A. Well, sir, I recollect that I went to Tweedy, and asked him what course I should pursue, in case a constable came with an attachment. He told me to pitch him out at the back door, if I could not throw him out at the front.—Cogswell said he thought that rather strong ground, and wished me to go with him to Judge Hubbell. The Judge pretty much concurred in that opinion. I merely went there on account of being asked by Mr. Cogswell to do so.

Q. That accounts for one occasion. Now, what were the other occasions about?

A. Well, sir, it was Mr. Cogswell's business that I went upon.

Q. What was that business? A. I cannot tell.

Q. Was it about that sale? A. I do not know.

Q. Had Cogswell any other business?

(Here the speaker's hammer intervened.)

Mr. RYAN. The question is asked. The witness can answer it to-morrow morning, I suppose.

Adjourned until the next morning.

TWENTIETH DAY.

WEDNESDAY, June 29.

MORNING SESSION.

Mr. KANE resumed the stand.

Q. At the time of the adjournment last evening, I asked you the question substantially, "How it was that after the Supreme Court decided that the bill

of Howe and others against yourself and Cogswell, was a mere creditor's bill to impeach that sale, you felt so much more interest in it than you did in the Parsons & Lawrence bill, which was also a creditor's bill to impeach that sale?

A. Well, sir, at the time of the filing of the Parsons & Lawrence bill, Mr. Cogswell took upon himself the responsibility of employing counsel to take care of it as much as mine, and even more, and inasmuch as he had employed eminent counsel, in taking care of his interest, he took care of mine; but in the Howe bill I considered the fact that I had not only to defend against the parties filed in the bill, but also against Mr. Cogswell.

Q. Did you ever at any time, yourself, personally, retain any body to defend your interests in the Parsons & Lawrence suit, to appear for you in that suit?

A. I never did—not that I recollect of.

Q. At what period of the suit was it that Cogswell did retain Judge Hubbell for you?

A. I could not tell what time he was retained. He said he would get Hubbell to draw the answer, and did so and brought it to me.

Q. Was that the first that occurred of employing Judge Hubbell to defend you in that suit, or was there anything previous to that?

A. I think that was the first proceeding in which he had any thing to do with it.

Q. Previous to the time that answer was drawn, had you any intercourse with Judge Hubbell on the subject of the Parsons & Lawrence suit?

A. I could not say whether I had or not. It is some time since, and it is a matter that is pretty hard to recollect.

Q. Do you recollect at any time before or after the answer was drawn, of conversing with Judge Hubbell on the subject of the Parson & Lawrence suit, against yourself, Cogswell, and others—in other words, had you any conversation with him in regard to that suit at all?

A. I did in regard to the answer after it was drawn.

Q. Was it before or after the answer was filed or sworn to?

A. I should think it was about the time it was sworn to.

Q. Will you state to the Court the substance of what that interview between you and Judge Hubbell was?

A. He walked up the street past our store, stopped at the door, and said he had drawn an answer by the direction of Mr. Cogswell, and wanted to know of me if it was all right. I told him it was.

Q. Did he show you the answer at the time?

A. No, sir. I had had it from Cogswell?

Q. Did anything further pass? A. Not at that time, I believe.

Q. Do you recollect any further intercourse with him afterwards on that subject? A. I do not now.

Q. Do you recollect the fact, whether or not you ever did converse with him on the subject of that suit? A. I think I did, sir.

Q. Did you not occasionally converse with him about the suit from time to time, up to the time that he was elected Judge?

A. All the conversations I had with him about the suit were previous to his being Judge—for after that, it stood pretty much in the shape it is in now; at any rate, it was lost sight of by me. It was sent away from that county.

Q. Do you remember anything of the nature or subject of your intercourse

with him from time to time with regard to that suit—what it was about, and what it related to?

A. I could not state, Mr. Ryan, for it was some time ago, and it is a matter that I did not impress upon my mind at all. When I talked with him about it, it was as I would talk with any other lawyer about, and when you come down to the particularities of what occurred, or what was said, I do not recollect.

Q. If while the suit of Parsons & Lawrence was being actively prosecuted by the complainants, as it was for a time, Judge Hubbell had declined to act on your behalf, and Cogswell would not, would you have employed other counsel to attend to your interest in that suit? A. Yes, sir.

Q. When the second order was made by Judge Larrabee, restoring the suit as to you, you were in New York, were you not? A. Yes, sir.

Q. You were in New York when that appeal was taken, also, were you not?

A. Yes, sir.

Q. When it was argued at the September term, 1851, you were still absent in New York? A. Yes, sir.

Q. After that order was made, restoring the cause as to you, the second time, was it not the first time you returned to Wisconsin, just before the June term of the Supreme Court? A. Yes, sir.

Q. From the time that that second order, restoring the cause as to you, in Washington county was made, up to the May term, 1852, have you and I met anywhere? A. We have not, sir.

Q. When you came to Milwaukee in May, 1852, did you not know by information, that at the December term, 1851, Judge Hubbell had sat upon the appeal from that second order, restoring the cause in the Supreme Court?

A. I think I did, sir.

Q. That appeal was still pending, was it not, in the Supreme Court, at that time, to be re argued and decided at the June term, 1852?

A. That is the way I understood it.

Q. You came out to attend to it yourself, did you not? A. Yes, sir.

Q. Did I ever propose to you, Mr. Kane, to argue that appeal, at that June term, 1852; was it not understood that I was not coming here at all, at that term of the Supreme Court? A. I think that was so.

Q. If at the time you and I first met, after that appeal had been taken, and the order which was appealed from, had been made, Judge Hubbell had already sat upon that appeal, and I was not coming to attend to the appeal any farther, how could it happen that I should state to you that I was anxious that Judge Hubbell should sit upon it, and that I thought he ought to sit?

A. It was at a previous conversation—previous to the fall before it was argued.

Q. Then am I to understand you as saying, that when you came on, you and I had any conversation whatever, as to Judge Hubbell sitting in that case, and was it not an understood fact that he had sat, and that he would sit?

A. I do not recollect whether there was any discussion then or not; but there was some talk about his having sat in some previous appeal.

Q. Where was that previous conversation?

A. Well, I think at one time—there was a number of them—at one time it was in your office, in the presence of Mr. Brown.

Q. Will you state what I said in regard to the propriety of Judge Hubbell's sitting?

A. Well, from my recollection, Mr. Ryan, I had been talking with Mr. Brown and yourself, in regard to Judge Hubbell's not sitting at previous appeals, and I had said that there was no reason for it as I could see from the advice I got from my counsel, and the remark I got from you, as I understood it—whether by assent or otherwise—and from Mr. Ogden also, was that there was no objection to his sitting in those appeals at all, and that he should sit by right.

Q. Was there any reason assigned for it?

A. The reason assigned, I think, in the first instance, in the matter of his sitting upon the first appeal, when he did not sit, was, that it was a matter, that if he had been counsel in the case, it made no difference with it, from the fact, that it was upon the practice of the Court, on an interlocutory order, that did not affect the merits of the case. I had a good many conversations with all my counsel, with reference to his sitting, at various times.

Q. Was it not between you and your counsel, in these conversations, that you speak of, a matter of doubt, both on your part and on their part, as to whether it was for your interest, that Judge Hubbell should sit?

A. Yes, sir, from the fact that he had been Mr. Cogswell's counsel, and I did not know but that he might be prejudiced in his favor.

Q. Did you consider that at the time the bill of Howe, and others, was filed against you, and all through that litigation—did you understand that the Parsons & Lawrence suit was at an end. I will ask you first, however, if you know of any step having been taken in it after it was removed to Walworth County?

A. I do not. I lost sight of it.

Q. Now my former question—had you supposed that suit was at an end?

A. I think I did, sir.

Q. When you retained me in the suit of Howe and others, was it not the first time you ever retained me, or that I ever acted for you, in any professional manner, whatever? A. Yes, sir.

Q. Did you state to me, or did I know anything about the Parsons & Lawrence suit at that time?

A. I do not recollect that I stated to you anything about it.

Q. Do you recollect of ever speaking to me, of the Parsons & Lawrence suit?

A. Yes, sir. I recollect one time, particularly, when you were drawing my answer in the Howe suit.

Q. How did the Parsons suit come to be spoken of then, when it was at an end—was it my desire to know the answer in that suit?

A. I think it was, sir. I showed you a copy of it.

Q. Was not that after George Cogswell had been examined before Judge Larrabee, in Port Washington, upon the subject of the Howe and Kane suit, and had made a declaration, or disclosure there, on the subject, to Judge Larrabee? A. I do not recollect.

Q. Well. I will try to refresh your recollection?

A. It is very hard to come at that, from this fact, so far as I recollect, I have no recollection of any particular conversation with you, with reference to the Parsons & Lawrence bill, previous to the time of drawing the answer in the Howe case. After that the records will show, better than my remembrance.

Q. Do you recollect that the time I made the draft of your answer to the Howe suit, I wished to know, or wished to see what your answer had been in the Parsons & Lawrence suit? A. Yes, sir.

Q. Did you not tell me that you had, yourself, a copy of that answer, and would bring it over to me? A. I think so.

Q. Was not that a copy of the stating part of your answer, and not including the oath and formal part?

A. I do not recollect whose hand-writing it was in, but I do not think there was any affidavit attached to it, nor any name.

Q. Did I know at that time, or at any time to your knowledge, who drew that answer, or was it a question between us at all, who drew it, or who represented you in the suit?

A. I do not recollect. It might have been and might not. I have no recollection that I told you who it was, nor that I did not tell you.

Q. When the sale was made to you by George Cogswell, was there a bill of sale made? A. There was?

Q. Do you know who drafted that bill of sale?

A. It was inmy own hand-writing. I think I drew it myself, and not from any form. I am not positive about it, but I think I did. I always had an idea that I could draw a pretty strong bill of sale.

Q. Were you as good a lawyer then as you are now?

A. No, I do not think I was. I do not think I had paid as much for my knowledge as I have since.

Q. Have you that bill of sale with you?

A. I have not. I am quite sure it is in my own hand writing.

Q. Was any body consulted as to the form or sufficiency of that bill of sale?

A. Not that I know of.

Q. Was there by Cogswell, to your knowledge?

A. Not that I know of. It might have been, but it is a matter that I do not now recollect of.

Q. You spoke last evening about a libel suit, which you had instituted against Jason Downer—will you state out of what that suit grew?

A. My remembrance now is, that it was upon the swearing out of an attachment against me by Downer.

Q. What did the attachment suit grow out of?

A. I will tell you what it grew out of. It was for the collection of a debt against Cogswell.

Q. Exactly. You thought that was going too far, and commenced an action of libel? A. Yes, sir.

Q. If I understood you rightly, you went to Tweedy & Crocker, and they did not like to do it, and you then went to Judge Hubbell, and he did it?

A. Yes, sir.

Q. At what time was that suit commenced—it was after the sale by Cogswell, was it not?

A. I do not know. I should think it was the same summer. I could not remember whether it was three weeks or three months before or after.

Q. You stated that you had consulted John H. Tweedy, who was one of your standing counsel, on the subject of this bill of Parsons & Lawrence?

A. Yes, sir.

Q. Do you recollect that you showed him the bill, or a copy of it?

A. I do not recollect whether I did or not.

Q. Did you ever procure from the clerk's office, yourself, any copy of that bill?

A. I do not recollect that I did, or whether I did or not.

Q. After the sale which Cogswell made to you, Cogswell remained in your store, assisting you, did he not?

A. Well, he was in and out there.

Q. He did his own business there, did he not, and that was his head quarters.

A. Yes, sir.

Q. How long did he remain in that way with you?

Mr. Arnold. I object to that question.

Mr. Ryan. Mr. President, I will state very briefly, the purpose of putting the question; and that is to show the relations between this witness, and the witness Cogswell, during the time it is alleged that Judge Hubbell, acted for this witness, upon the retainer of the other witness, to show the relation at that time, between the two witnesses, and to show simply, that they were there together at that time, in the store.

Mr. Arnold. I object to that question, Mr. President, as I should have objected to one or two preceeding ones, if the answer had not been given before I had time to object.

The first question was, whether after the sale, Cogswell did remain with the witness. I took occasion last evening, as the Court will recollect, when the counsel on the other side, departed from what I deemed to be legitimate cross examination, and I should have insisted upon that objection except at the instance of the respondent himself, when I withdrew it, and I think, that the cross examination, since that time—or rather the *examination* conducted by Mr. Ryan—has been out of order, and has not been legitimate cross examination. The Court will bear in mind, in order to appreciate this objec ion, that in the direct examination of the witness, I only propounded to him certain questions of fact—indeed they might all be reduced to two. The first was, whether in any of the matters growing out of, or involved in the Parsons & Lawrence suit, the respondent was employed by him, as his counsel; whether or not, in fact, he was not the counsel of Cogswell alone; to which he answered in the affirmative, saying, that that was the fact, and that it was by the procurement of Cogswell, that the respondent drew the answer of Kane and others, in that suit. I then questioned him as to the fact of Mr. Ryan being his counsel, in the appeals to the Supreme Court, and to the fact, that he was desirous that Judge Hubbell should sit as Judge upon the hearing of those appeals. I pursued that examination cautiously and gradually, for the purpose of saving time as far as possible, by precluding a long cross examination of this witness, in regard to matters which I thought were extraneous. I had reason to anticipate—as a lawyer, it is natural I should, after the examination of Mr. Cogswell, the other day, which occupie l so much time—that the counsel upon the other side might seek to go into all those matters, connected with the sale, its fraudulent or *bona fide* character, and all that, with this witness. Believing it irrelavant, I resolved not to open the door for it; in other words, I determined, if they got it at all, they should get it by making him their own witness. We did not wish to take up the time of the Court, by ourselves opening the way

for going into that irrelavant investigation. Now, by all the rules of cross examination, the counsel upon the other side is limited to those matters, about which the witness was inquired of, on his direct examination, and I say, that this question, as well as many others, put to the witness, by the counsel, is inappropriate in cross examination; because I inquired nothing about their good faith, in relation to that sale, nothing about any intimate relations between him and Cogswell, nothing about how long Cogswell remained with him, nor what compensation he received; but confined my examination simply to the fact of, whether Judge Hubbell, in that bill of Parsons & Lawrence, was, or was not also his attorney. That is the question, that is vital to the charge, which is pending before the Court, a charge of having been counsel in these subject matters which did involve matters similar in that suit; hence it was palpably important to show by this witness, that the respondent was not counsel for Kane, and that he only drew the answer at the instance of Cogswell, and by Cogswell's procurement. I make this objection, with a view to save time for ourselves, because we deem it inappropriate to legitimate cross examination. If the other side think he is a competent witness, they can put him upon the stand, then his testimony can be drawn out by a direct examination.

Mr. Ryan. Mr. President, I read long ago in a book of great authority, that it made a material difference whether your bull gored my ox, or my bull gored your ox. Let us see—we called the other day, George Cogswell. We asked him questions and he gave answers, tending to prove that Judge Hubbell had been of counsel for both Kane and Cogswell, in the suit of Parsons & Lawrence against themselves and others. That is the substance of the examination, tending to prove that Judge Hubbell was their counsel in the transaction of the sale, and that Judge Hubbell was Kane's counsel in the Parsons suit. That was the purport of our examination. Now, they call Mr. Kane to show that Judge Hubbell was not his counsel in that suit.

This is not the time to give the views of the Managers as to the effect of Mr. Kane's testimony, and I shall not say a word about it. Now let us compare the two courses pursued on the cross examination of these witnesses. I have before me the printed report of the direct and cross examination of Geo. Cogswell. The first question, after identifying Mr. Cogswell as the man who made the records, is as follows. (Here Mr. Ryan read briefly from Mr. Cogswell's testimony, as published in another portion of our report.) That covers the substantial grounds of the examination by us, and covers the heads of mine. Now, Mr. Kane is called to prove directly the reverse. Well, let us see what the cross examination of Mr. Cogswell was. The first he is asked is, when he came into Milwaukee, &c. (Mr. Ryan read several questions from the cross examination, alluded to.) Now, sir, the Court will recollect generally, that Cogswell was cross examined in regard to *all* the dealings between him and Kane. It was not we who sought that information, except so far as it bore directly upon Judge Hubbell's being counsel for Kane. I supposed then, and I suppose now, that it was a legitimate subject of cross examination. Now we do not desire here, to assume, nor to introduce collateral issues. I think that desire has not been manifested upon our part; but we think it perfectly legitimate to pursue this cross examination in the manner we have, and especially to put to the witness, this question. We do not propose to go with this witness, into the whole history of this transaction between Cogswell and Kane, but

we think it perfectly legitimate to ask him every question which tends to explain the testimony he has given upon the direct examination, and to show the reasonableness and probability of that testimony. Now, this witness, among other things, has stated that Judge Hubbell drew his answer and acted upon the retainer, not of the witness, but of Cogswell. He stated also, that if Judge Hubbell had declined to act, or refused to act upon that retainer, and Cogswell had retained nobody else, he, Kane, would have retained somebody else in that suit. Now, for the purpose of explaining that whole matter set forth even upon the testimony of the witness himself, that Judge Hubbell was acting in his behalf, in that matter; tending to show the whole *status* of the cause, I propose to show by this witness, that during the whole time that active proceedings were taken in the Parsons & Lawrence suit, against Cogswell and Kane, they were doing business in the same store and had some connection together. That will put a very different construction upon it, than it would have if Kane and Cogswell had been henceforth utter strangers. It would have been a very different thing, if they still kept up intimate personal relations; Cogswell doing his business there, and more or less assisting the witness in his business, than it would have been if Cogwell had gone off and the whole matter had ceased. It seems to me the testimony is very apparently pertinent and legitimate for cross examination, as both explaining, and as showing the reasonableness or unreasonableness, probability or improbability of the witness' testimony.

Mr. ARNOLD. Mr. President; a single word in reply. The question now before the Court, is one entirely of legal practice. The position assumed by the counsel upon the other side, is, that the position of this witness, so far as the right of cross examination is concerned, is parallel with the position of George Cogswell, when he was a witness upon the stand. I differ from the counsel—totally differ from him. The rule, as I stated before, is, that in cross examination, the counsel is limited to those matters about which the witness is questioned on the direct examination. I have stated the substance of the direct questions propounded by me to this witness, and I put those questions briefly and carefully, expressly to cut off any irrelavant cross examinations, and for the further purpose, that if the subject matter of the witness' testimony, should be deemed important by the managers, that they, themselves should offer it, and make him their own witness. Now, let us see whether the cross examination of Cogswell was not pertinent and immediately pertaining to that pursued when they examined him upon the stand. I beg the attention of the court while I read two or three, only, of the questions on the direct examination of Cogswell. The second question opened the whole subject upon which I cross examined Cogswell. (Mr. Arnold here read the questions alluded to, from our report,) and so on for a dozen questions, going directly into the matter of that sale of goods, the employment of counsel, in regard to the bill of sale, the "*advisability*" of the sale itself, the surrounding circumstances of the attachment, &c. Here the direct examination of Cogswell opened the whole scale of cross examination in full, to which he was subjected. Hence you see, and the court must perceive at once, the difference between the position of Cogswell on the direct examination, and the position of the present witness on his direct examination. Now, I do not dispute the fact, that the learned counsel is entitled to go into any examination of this witness, which goes to

controvert the facts sworn to by him—that in the Parsons & Lawrence case, Judge Hubbell was not employed by him, as his counsel; I do not dispute that at all. That is the point, and the only point we sought to establish by him in this matter, as material. Now they propose to go into this cross examination, for the purpose of showing the improbability of his story, by showing that he ought to have employed counsel—that he was interested, and being interested, ought to have employed counsel. Let me answer the counsel, that he has already asked the question and got the answer—that is, if Cogswell had not employed Gen. Hubbell, whether he, Kane, would not have thought it for his interest to employ counsel, and he says he should. Now, that is a direct answer, and after he has got that answer, can it be proper that he should go into a distant, vague and far-fetched examination, as to prove that he had intimate relations with Cogswell, that it was his interest to employ counsel, and that he ought to have employed counsel, when they have already got the answer, that he would most likely have employed counsel. That seems to me to be sufficient, and should cut off a fact so remote as that which he is now inquiring about—whether his relations with Cogswell showed such an interest that he ought to have employed counsel.

The question was submitted to the court as follows: "How long did Cogswell remain with you in that way."

The question, shall this interrogatory be put to the witness, having been put to the Court, it was decided in the affirmative—Ayes, 20; Noes, 4.

A. Well, sir, I could not state the time he was there.

Q. I do not want an exact statement, as to the time, but I want your memory, of about how long it was?

A. I think he was there until he went to Mr. Hastings'.

Q. Was that the year after your purchase?

A. I should think it was a year after; but I cannot recollect the time.

Q. Do you recollect the time that Cogswell went away to Detroit?

A. I do not, sir. I recollect that he went away, but not the time.

Q. Do you recollect that he went, because he was afraid the Court was going to attach him? A. I do not know what he went for.

Q. At the time he went away, was he still at your store, in the capacity you speak of?

A. If it was before the sale of that same stock of goods, or the remaining portion of them, it was before; if not, he was not at my store, when he went away.

Q. I want to go back to another subject, a moment. In regard to drawing that answer, you state that Cogswell brought you that answer?

Q. Yes, sir, I think so. That is my remembrance about it, sir.

Q. Had you not previously seen that answer in Judge Hubbell's office?

A. I had not.

Q. Do you recollect before whom that answer was sworn to?

A. I do not, sir.

Q. Do you recollect now, the circumstance of swearing to it.

A. I do not, sir.

Q. Do you not remember, after that answer was drawn, and before it was sworn to, of being in Judge Hubbell's, attending to the answer, when George Cogswell and William B. Hibbard were there?

A. I do not, sir.

Q. Can you state positively, that you never saw that answer, till Cogswell brought it to you?

A. I cannot, sir.

Q. May you not have seen that answer, the draft, or copy of it, or either of them, in Judge Hubbell's office, before it was sworn to?

A. I think, Mr. Ryan, the first time I saw that answer, was, when it was brought to me by Mr. Cogswell. I think so. That is my remembrance now?

Q. May you not have seen the first rough draft, at Judge Hubbell's office, before that time, Mr. Kane? A. Well, I don't recollect that I did, sir.

Q. Are you able to state that you did not? A. No, sir. I am not.

Mr. ARNOLD. Since you have been cross examined, Mr. Kane, and had your attention called to all the questions, pertaining to the subject, do you still say, or do you not, that in the matters embraced in the Parsons & Lawrence bill, Judge Hubbell was employed by you, as your counsel?

A. He was not. I still say so.

Q. Are you clear and decided on that subject? A. I am.

Q. Can you say that you never paid him for any services?

A. Not that I recollect of.

Q. Well, if you had paid him anything, would you not have recollected it?

A. I think so.

Mr. RYAN. You have stated that he was not employed by you. Did he act for you in the suit of Parsons & Lawrence?

A. He drew the answer, sir. Whatever else belongs to acting as a lawyer in such a matter, you, who are bettter lawyers than I am have full as good a scope for judging, as I have.

Mr ARNOLD. Did he draw that answer at your request, or at the request of Cogswell?

A. At the request of Cogswell. I did not request him to draw it.

Q. Have you had the care of the account books and the credits of George Cogswell?

Mr. RYAN. I suppose that as to anything contained in the books, the books are the best evidence.

Judge HUBBELL. If you and the Managers wish to see my books, and all the charges made, I can submit them to you. There is not a question about that matter, as far as my action is concerned.

Mr. KNOWLTON. Do you wish to be understood as objecting to the answer to that question.

Mr. RYAN. Yes, sir.

Mr. ARNOLD. Well, let it go. Mr. Kane, at the time of your retaining Mr. Ryan, in the Howe suit, and his drawing your answer, did you not communicate to him the fact that Judge Hubbell had been employed by Cogswell as his counsel in previous matters in the Parsons & Lawrence suit. Was he not informed of that fact?

A. My impression is, that I talked with Mr. Ryan about that matter.

Q. I do not care about that; but whether in your speculations between you and your counsel, about Judge Hubbell sitting upon the bench, in the matters that have come up here—whether it was not all a matter of policy or safety, his sitting upon the bench, inasmuch as he had been employed as Cogswell's counsel—whether it was policy for you to have him sit?

A. I do not exactly understand that question, Mr. Arnold.

Q. Whether his sitting upon the bench was not a matter talked of. Was it not talked of, whether he would be at all prejudiced against you, from the fact that he had been previously employed as Cogswell's counsel?

A. Yes, sir, that was a matter of conversation.

PHILANDER KANE was sworn and examined.

Q. Are you the father of Charles I. Kane. A. Yes, sir.

Q. Do you recollect a bill in chancery against your son and Cogswell, and in favor of Parsons & Lawrence, and others? A. Yes, sir.

Q. Were you a defendant in that suit.

A. Yes, sir. I was made a defendant it seems, in the bill.

Q. You made an answer did you not. A. I did.

Q. Did you make your answer jointly, with Charles I. Kane, Alonzo L. Kane, and Samuel Church?

A. I do not recollect, it was so long ago.

Q. Did you employ any counsel to draft your answer.

A. I did not especially, that I recollect of. I called on counsel, to advise on the subject; but I don't think I ever retained any counsel.

Q. What counsel did you call upon. A. Tweedy & Crocker.

Q. Did you ever consult with Levi Hubbell, or employ him to draw your answer in that case.

A. No, sir. I never had any conversation with him upon the subject, to my recollection.

Q. Did you ever employ him professionally, in any manner whatever.

A. No, sir.

Q. And never paid him any bill for professional services. A. No, sir.

Cross Examination.—Q. Had you any connection whatever with the mercantile business of your son, Charles I. Kane, or George Cogswell?

A. No sir, I never had.

Q. Had you any dealings with either of them, at the time the Parsons & Lawrence bill was filed, which gave you any interest or connection in that suit?

A. No sir, not that I know of. Or at least no other dealings than what perhaps I should explain, if it be important. I presume that my son had some account, at his store, against me. I presume I was a customer of the store. I had then recently moved into Milwaukee, and had no connection with the business except as a mere customer.

Q. Do you recollect who gave you, or who brought you the answer which you put in, in that suit?

A. I think it was Mr. Cogswell; I think he brought it to me while I was in the store one day. He probably told me who drew it; but I do not know that he did, I have no recollection, but I presume he did.

Q. Do you recollect where you made oath to that answer?

A. I do not sir, it was a matter that went from my mind. I supposed I had no real interest in it, and so I had no motive to remember it. I was a little uneasy in the matter, being made a defendant in a suit, stranger as I was then. My son and Cogswell said to me, you have merely got to answer "that you have no property of ours." I felt uneasy about it, and said I would like to talk with some lawyer about it. My son suggested—"you go to Tweedy & Crocker's office. They are my attorney's, and they will tell you about it." I

did go, first I think to Mr. Crocker. I think I took the answer with me. He told me it was all correct. I stated to him all there was about the matter; that I had'nt anything to do with the premises. He said it was all I would have to do about it, and I need give myself no uneasiness. After that I paid no attention to the suit. I do not recollect before whom it was sworn. I merely recollect that I was presented with the answer by Mr. Cogswell, and was asked to make an affidavit to it.

Q. Who was with you at that time?

A. I should think Mr. Cogswell was with me, but I am not positive. He seemed to take charge of the matter.

Q. Do you recollect whether Charles I. Kane, or Alonzo L. Kane, or Samuel Church, were with you at the time?

A. They might have been, but I have no recollection of it.

Mr. ARNOLD. Mr. Ryan, will you have the goodness to tell me before whom it was sworn?

Mr. RYAN. Before Charles Crane.

Mr. ARNOLD. Mr. Kane, were you acquainted with Charles Crane. Was he an acquaintance of yours in Michigan? A. Yes sir.

Q. He is dead now I believe, sir? A. Yes, sir; so reputed to be.

ALEXANDER BOTKIN, was sworn and examined, to Article eleven, Specification two; and Article eight, Specification three.

Q. Were you acquainted with Mrs. Van Bergen, who formerly resided in this town?

A. I was acquainted with several Mrs. Van Bergen's. I suppose you allude to the widow Van Bergen. I knew her.

Q. Where is she now.

A. She is reputed to have gone to California. She left here some time last spring.

Q. Do you know whether she had been making preparations to leave for California for some time.

A. I believe she had. She lost her husband, shortly after he started from home. He died, and left her in the possession of some mortgaged property, that she consulted me and my partner about making a disposition of, and stated that she was going to California. She was not satisfied about the report that came of his effects there. She consulted with me two or three times about selling her property. When she ascertained she could not dispose of the property, as it stood, she then gave up going, and then went to building a house here; after it was about half built, I heard her say that if she could sell it then, she would go; however she finished the house and kept boarders here, and I heard her say repeatedly that she would go. When the city here was about buying a jail lot, she came into the committee room, and made propositions to sell the property to them then. Sometime during the spring last past, she disposed of her property and left. Before she sold her property, she told me she had a prospect of selling to Mr. Miller, a Baptist minister, and if she effected the sale, she intended to go to California.

Q. Did you as her counsel, file a petition in any Court, and if so what Court, and when was it, and what was it about, and how did it all end.

Mr. RYAN. I don't understand the purpose of that question.

Mr. KNOWLTON. If you desire a statement of the purpose, it is for the

purpose of showing that Judge Hubbell's conduct, as far as regards Mrs. Van Bergen, has been perfectly proper.

Mr. RYAN. I presume that is so upon the knowledge of Col. Botkin; but no testimony has been introduced by us upon the subject.

Mr. KNOWLTON. I understand you then to object to the question.

Mr. RYAN. I do, sir.

Mr. ARNOLD. Mr. President, it is possible that in strict practice this objection is well taken; but to make it properly, I think the counsel for the Managers are bound to get up here and say in this court in regard to that accusation against the respondent they have no proof; or rather, that they can furnish no proof. The accusation, if not true, is grossly libellous, let it come from what source it may. Now we offer this proof, not to rebut its truth, not to rebut any proof because they have offered none, but to rebut any suspicion that might rise against the respondent; not only here but everywhere, this libellous charge has gone against the motives and conduct of the respondent. It is to show as far we are able to do so, every thing that transpired in an interview occurring casually in a stage coach, from Milwaukee, in which certain contemplated judicial proceedings were a matter of conversation; to show how they commenced, what they were for and how they were terminated; in other words the object is to repel suspicion and to show to the world, that the conduct of the respondent toward that woman, was entirely unexceptionable.

MR. RYAN. Mr. President, the Assembly preferred the charges to which this witness was called, upon what they consider sufficient to support them. We called a witness the other day, Mr. Hood, I believe, sufficient to show the absence of the lady whose name is mentioned in the specifications. It is upon the records of this court, that upon the fifth day of April last, she was duly served with a subpœna to attend this trial. Since that time she has gone out of the jurisdiction of this court, and out of its reach. The witness was called, simply to show our inability to give the proof of that charge. I do not know, even after the counsel has undertaken to explain it, that I understand the object and the drift of the questions he puts to Col. Botkin. If he desires the Managers to admit that within Col. Botkin's knowledge no improprieties passed between the Judge and this lady, I assume that that is so. We are willing to admit it. I do not see what else they could show here. But for the mere purpose of shutting out irrelevant testimony, I object to it, and I understand the counsel himself to admit, that is irrelevant. I may say at once that the woman named in the specification being gone, we have no proof whatever upon this charge, as she was the only witness to it.

MR. ARNOLD. That is not entirely satisfactory to us. The charge has been made. It has been published and sent forth to the world, to the prejudice of the respondent. We are not entirely satisfied to leave it now, with the simple concession on the part of the Managers, of their inability to prove the charge which has been made. We wish to go further, and show that it has no foundation in fact, and what we really, and verily believe to be true, that these Managers had really no just cause nor foundation on which to base that charge. The concession does not meet the whole injury we have suffered. It is not my intention to urge this proof upon the Court, against its pleasure. Had another witness, Mr. Wood, been present inthe house, we should have

called him first; but not knowing what disposition the Court may make of the offer which we have now made, I desire here, publicly to make an offer, and to have it go forth to the world in the report of this case, to prove by Mr. Wood, that he was present all the time in the stage coach, between Milwaukee and this place, in which an interview took place between the respondent and Mrs. Van Bergen, which is the interview alleged in these charges, to have been an indecent one, and had with a view to indecent debauchery on the part of that lady. We wish to show and offer to show, that he was present all the time and witnessed everything that transpired. We wish to show by Col. Botkin, the present witness, that legal proceedings were commenced in this county, partly, perhaps upon the strength of the conversation that took place in the coach, between her and the respondent, and also upon the advice of her counsel. We wish to show what these proceedings were, and how they were disposed of by the respondent as Judge. We wish to show that the very decision which was made, would go entirely to repudiate not only the charges, but any imputation upon his judicial character, it being a decision directly adverse to the wishes of the petitioner, Mrs. Van Bergen, and directly defeating the object which she had in view in the proceedings.

Mr. Ryan. Mr. President, in regard to that offer, I have something to say, on behalf of the Managers—not upon the question which was put and upon which I have already stated what I had to say. The gentleman has stated that this charge was a libellous charge, if it was not true. I beg here to say to the gentleman, inasmuch as he made that charge of its being libellous, that no indictment, no charge, in any form known to the law, prosecuted or presented by anybody authorized to do so, no pleading filed in any civil cause, on matter what imputations they may contain, are in my judgment as a lawyer, libellous or can be libellous. I believe all the decisions go to that length.

Mr. Arnold. Do you mean to say that they are not libellous in a moral sense, or that they cannot be made the subject of a suit for libel?

Mr. Ryan. I cannot tell how far the learned counsel's ideas of moral defences, and constructions of moral sanity and insanity, and of moral other things, may go. I do not profess to understand that sort of defence. Simply speaking in a legal sense, and dealing with the gentleman as a lawyer, I undertake to say, that such pleadings as I have named, are not and cannot be considered as rightly, matters of libel. That there is a popular acceptation to the word, which means that they are accusatory, I do believe; an acceptation which is applied, I believe, to words spoken as well as written. That acceptation, however, I have nothing to say about. These specifications contain a grave charge, and if the gentleman means to say that they are libellous, because they are accusatory, then there is no doubt about it; but when the gentleman says that these Managers preferred this charge without any sufficient evidence to sustain it, I have but two things to say. I have to say, that these Managers did not prefer these charges at all. The Assembly of the State of Wisconsin, preferred them. These Managers are sent here by the Assembly of the State of Wisconsin, to substantiate these charges of impeachment, in proof, before this Court; and I think that the Assembly of the State might have received that much of indulgence at the hands of the gentleman, to suppose that they

did not prefer the charge without evidence. Now, the gentleman, I take it, on that subject, speaks in the dark.

Mr. Arnold. Because you refused to enlighten us.

Mr. Ryan. But because we refused to give you light; I take it you are as much in the dark as before; that is no reason, however, that you are able to say that you are in the dark, that I know of. Now, I say as a matter of justice to the Assembly of the State of Wisconsin, that they did not prefer this charge without evidence to uphold it. I do not pretend to state here, and I never have stated in any instance, what any witness testified to, in any examination before the Committee of the Assembly, which did not appear in the testimony of the witness upon the stand. I have cross examined witnesses upon their statements, but I have never, and shall not, and no statement from the other side, will induce me, so far as to violate any rule of propriety, by stating what any witness in that examination did prove; but I will state that the counsel is utterly mistaken, he being utterly ignorant of the facts, when he says that that charge was made without evidence to sustain it. Now, we proved as a mere matter of justice to this Assembly, and this prosecution, that this witness left the State, after having been subpoenaed by us. That, we could not help, any more than we could help her death; and simply because the witness is gone, or dead, is no cause for such an imputation upon the Assembly of the State. Now, if the gentleman desires a full opportunity of rebutting what we have given no proof of, because we had no witness to give proof of it, after Mrs. Van Bergen had left the State; if the gentleman desires it, we will read to the Court the deposition of Mrs. Van Bergen, and let the counsel rebut it. But I cannot understand where the gentleman gets his stage coach information. There is no allegation in these articles of impeachment, when or where or how, the matter in the charge took place, beyond what is stated; and if the gentleman were giving evidence of a stage coach interview which I understand his proposition to be, he is giving no light whatever, even though it were relevant, upon the allegation. Our specifications have not tied down this transaction, to any particular time or place. There is here no allegation of any stage coach interview, and the gentleman may find himself to be giving his testimony to an utter'y different thing, from what is charged. In the absence then, of any testimony on our part, we do not see that what he is giving in evidence, has any relation to what we have charged, and I think the Court, the gentleman himself, and the public, will be precisely in the same way, and as much in the dark, upon that matter, as they are now. We simply thought it necessary, Mr. President, in justice to the case, and to the Assembly, to show that we had done what we could, to have the witness upon this charge here, and that by an act over which we had no control, the witness is not here, and cannot be had here, that was a matter of justice, for, no doubt, the learned counsel would have commented upon the non-production of the witness, in a very pointed manner, if we had not accounted for her absence, and, moreover, it would have been a legitimate subject of comment. Now, the gentleman, in his proposition is rebutting a matter, that is not before the Court, and not even so rebutting it, that his testimony will apply upon the charges and specifications made. If he desires the opportunity of going into it, I see but one way, and that is, the way which we propose. If, on his own proposition of rebutting what does not exist, he perseveres in his offer, we object to it, and the grounds

of the objection have been stated—that it is irrelavant, unsatisfactory to the Court, and he really is rebutting what there has been no proof given of here, and what will not apply, even upon its face, to the charges made.

Mr. Arnold. The learned counsel has made a most specious argument, against the propriety of the argument, which I have submitted to the Court, and I am not prepared to say, as a lawyer, but it may be a satisfactory and sufficient one, in the law. The counsel says, that the allegation in the charges, is general in its terms, and is not pointed to any particular interview, such as I have denominated, an interview in a stage coach, and that there is nothing before this Court, by which, on the face of these charges, it is informed of any such interview. That is true; but yet, it is not asserted by the counsel, and I apprehend it will not be asserted by him, for he has light, and I have not, that in the testimony of Mrs. Van Bergen, which he has before him, there is any pretence of any other interview, than that one, which did take place in a stage coach, between this place and the city of Milwaukee. Not having seen that testimony, I cannot say; but I apprehend that neither the counsel, nor the Managers, will venture any such assertion. I believe it is not pretended, that this lady ever had in her life more than one single, solitary interview with the respondent. That is the interview, which I have referred to. True, it is not spread upon the charge, nor are any of the facts, that have been proven upon this trial, set forth in these accusations. They are general in their nature, some of them covering a great many facts, and some of them, like this one, standing alone; but the counsel makes a proposition, and that is, that this testimony, which we offer, cannot be pertinent, because it does not rebut anything that is specifically before the Court, in proof; and that it cannot be pertinent, until the facts, disclosed in the testimony of Mrs. Van Bergen, are before the Court; and, therefore, he offers to read the testimony given by her, before the committee, which, in his judgment, might then admit the testimony we propose to offer. But let us see for moment, whether that is a proper proposition for him to make, or, at any rate, an appropriate one for us to accept. Had the gentleman, at an early stage of this proceeding, when we earnestly besought him, when we even appealed to him, and to this Court, furnished us that proof, we should now be prepared to make a definite answer to this proposition; but now we dare not accept it, and one moment's thought will indicate to the mind of every member of this Court, the reason why.

Suppose, may it please the Court, that that woman had testified before that committee, to some improper interview between her and the respondent; suppose she is a malicious, foolish and corrupt woman who has seen fit, from improper motives, for the purpose of injuring the respondent, to have gone before that committee and testified to any impropriety. She is not here, to be subjected to a cross examination. She cannot be here to be asked the question, whether she has or has not admitted since, and said to some of the most respectable citizens of Madison, that there never had been any impropriety on the part of the respondent towards her. The gentleman, as a lawyer, well knows that I could not call those ladies or gentlemen here, to ask them that question, until I had put the question to Mrs. Van Bergen, herself, whether or not, she had made these admissions. He asks of us too much. He asks us to take a leap in the dark. I do not know to what this woman may have testified. I do not know but she may have thoughtlessly, foolishly, or maliciously

undertaken to testify to some impropriety committed by the respondent. We believe she has not. We might safely, I think appeal to her testimony.—We have no reason to entertain anything but the highest respect for that lady, and the most unbounded confidence in her character and reputation. But they have kept us in the dark, and we are unable to pass an intelligent judgment upon the *ad. captandum* proposition, they submit. We ought to have the witness here, to ask her, first, whether she testified so and so, and secondly, whether she had admitted to other persons, a different story, and if she has sworn falsely to give us an opportunity to bring in other witnesses to rebut her statement. The court will therefore see at once, that the argument of the counsel is a specious one, and that we are pursuing a safe and proper course by rejecting his proposition, and if the court sees fit to reject our offer, as I have said before, I do not know but the decision would in law be a correct one. Still, we have felt bound to offer it. We regret, and I presume the respondent does, that she is not here to be placed upon the stand, because we believe she would testify to no earthly thing that would cast a reflection upon the respondent's character, and because, secondly, if she did, we should have the means at hand, indubitably, to rebut her evidence.

Mr. Ryan. In the regret which the counsel expresses, for the non-presence of the witness, Mrs. Van Bergen here, the Managers and myself entirely sympathize. We regret it, quite as much as the counsel can. We did what lay in our power to prevent, by serving a subpœna on her as early as April last.—That is all we could do; and we beg leave to offer the counsel our entire sympathy in his regrets. In regard to my proposition, the gentleman deals with it as if it was a proposition which I made here, *per se*, by itself, as an original proposition. Mr. President, I never made such an offer in this cause as an original proposition. I made it in reply to his proposition. He proposes to rebut this story, the testimony of Mrs. Van Bergen, without hearing and without having that testimony before the Court, and I offered to put the testimony before the Court, in order to give him something to rebut.

Mr. Arnold. We do not propose to rebut the testimony of Mrs. Van Bergen. We do not know what that testimony is. But we propose to show the whole of any interview that we have heard of, or know of between Mrs. Van Bergen and the respondent, and all the facts in regard to the legal proceedings growing out of that interview, and now pending here. We do not propose to impeach her, for we do not know that she has sworn to anything improper or untrue.

Mr. Ryan. Now let us see if I was right or wrong. The gentleman proposes to rebut the specifications in relation to Mrs. Van Bergen. It is conceded on all hands that she, if any body is, the witness upon that specification. Now in order that they may have something to rebut, we propose to read her testimony, and the question of difference between us here, is whether the gentleman shall rebut what is before the Court, or what is not before the Court. It is true, and the gentleman states the proposition correctly—that he does lose all the direct and indirect benefits of the cross examination of the living and present witness; and therefore we would not have thought of making it as an original proposition; but the simple question before the Court, is whether the gentleman shall have the opportunity of rebutting testimony that is before the Court, or to introduce to this Court evidence against what is not before

it, obliging us to leap bodily after him in the dark to rebut what he introduces. That is the difference, as I understand it, between us—precisely the difference, and the whole difference; and as I said before, I do not see what he gains by it. I have not stated, and he says very truly, that I have not stated whether Mrs. Van Bergen's testimony relates to a stage coach interview, or whether it does not. I will state to this Court nothing, and I think I am right in stating to this Court nothing whatever, that she did testify to; but if the gentlemen wants to see the detail, there is but one way that I can see, to gratify him.—Now as to the gentleman's censure, upon us, for it was a censure, for not giving him a copy of all the testimony, taken before the committee, I did not think it quite right for the gentleman to admit just so much as he pleased and reject so much as did not suit his purposes. We had an objection to giving him the testimony. We thought it a proper one, and the Court sustained us; and I supposed that matter was ended.

Mr. KNOWLTON. As there have been a number of propositions made here, I wish to submit one on my own account; and that is, that he submit to us the testimony of Mrs. Van Bergen, taken before the committee, so that we may know what she states, as to the time, place or company of any interview that may have taken place, whereby we can rebut or explain the testimony of Mrs. Van Bergen. If we find that the time and place and circumstances are so stated that we are in an attitude to introduce testimony to show that we are in no degree reprehensible, we will permit her testimony to be read to the Court.

Mr. RYAN. I am instructed by the Managers, to state in answer to that last phase of the proposition, that it is very like another proposition that was made to submit the deposition of another witness, and if, in his judgment that deposition met the case, he would admit it, and if it did not meet the case, he would not admit it. We must respectfully decline the proposition.

Judge HUBBELL. (Just before the moment of adjournment.) While the minute lasts, Mr. President, allow me to say one word. This Court has already indulged one gentleman, when, not under oath—he desired to make a defence of his character before this body. I beg leave to say now, to this Court, while I stand charged before the world, in all the public prints of the United States, with having attempted in my official capacity, to induce this woman to submit to debauchery; I say, I beg leave to state, that as GOD is to be my final Judge, no proposition of that sort, or any indecent proposition of any kind, was ever made by me to that woman. I do not believe she ever swore to such a proposition. I would stake my life, that she never did swear to such a thing. If she did, she committed black perjury, for she has since, repeatedly, told her friends, that no such proposition was ever testified to by her before that committee. This is upon me a most serious charge, and I have no earthly means of meeting it, no protection as a defendant here, except to make this solemn declaration, in the presence of this audience, and in the face of the world, that the calumny which the committee and the Assembly and the counsel have cast upon my name, has no particle of foundation in truth.

Adjourned, till afternoon.

AFTERNOON SESSION.

Senator HUNTER asked that Senator Allen be excused this afternoon, as he was quite unwell.

Mr. ARNOLD. Mr. President, the respondent has reduced to form the offer, which was informally made this morning. It is as follows:

"The respondent offers to show, in relation to Specification 3, under Charge 8, by the testimony of Algernon S. Wood, that he was present at the alleged interview between the respondent and Mrs. Jane Van Bergen, which occurred casually in the stage coach between Milwaukee and Madison, that he introduced the respondent to her, and heard all the conversation between them, and that nothing occurred to warrant the said charge, in any respect.

"The respondent further offers to show by the witness Alexander Botkin, that he filed a petition for Mrs. Van Bergen, after the aforesaid interview and in consequence of a suggestion made by the respondent, (as she informs him,) praying the Circuit Court of Dane County, to authorize the sale of a mortgage, for some $2,000, belonging to the estate of William Van Bergen, deceased, for the support and education of their four minor children, and that on presenting the same to the respondent, then sitting as Judge, and after some examination and enquiry by counsel, it was dismissed, on the ground that the statute authorized the sale of real estate only, for the purpose contemplated."

This is in form, the offer which was informally submitted by us this morning, and upon which a long discussion ensued. The offer was made, Mr. President, in good faith, for the purpose of vindicating the respondent from what he felt to be a calumny cast upon his character in one of the charges brought against him by the Hon. the Assembly. I stated then what I now concede, that I had great doubt whether under the strict rules of evidence, in judicial tribunals, this evidence could be received; and yet, we feel that the natural sympathies of the Court, under the circumstances, would incline them to the reception of this evidence. Not, however, wishing to urge upon the Court to receive, on account of those feelings, testimony which might be strictly exceptionable, we have concluded to withdraw the offer, and do withdraw it.

Colonel BOTKIN resumed the stand.

Mr. ARNOLD. We propose now to examine Article 3.

Q. Do you recollect the case of the State against James N. Haney.

A. I have some recollection of it sir; I helped defend him.

Q. After the verdict of the jury, did you have any conversation with George B. Smith, in presence of Mr. Thompson.

A. We had some conversation together near the western end of the Hall here, in relation to some conflicting sections of the statute in relation to whether he could be fined or must be imprisoned.

Q. Was that when the Circuit Court was held in the Assembly Hall.

A. The Court was then in session, I do not think I can state what the conversation was; I cannot call to memory all that was said in relation to that matter; my memory is very imperfect on that subject.

Q. Do you remember what Smith said to you on that occasion, or Thompson, in relation to the legality of imposing a fine upon Haney, instead of sentencing him to imprisonment.

A. I do not know that I can recollect what language he made use of. There was something in relation to it. I had not taken so active a part in conversing about it as some of the other lawyers. There were three or four of us on the defence.

Q. You cannot remember whether he expressed a decided opinion whether he could be fined.

A. I do not recollect that he expressed a decided opinion, that he could not be fined. We said something about the Satute, and spoke about what view the Court might take, to some sections referred to. I know he left us there, and went and spoke to Judge Hubbell; I know Thompson insisted upon the propriety of fining in place of imprisonment. I do not recollect the cause of his going to the Judge, nor whether it was on some suggestion of his own.

Q. Were you present at the time a motion in arrest was argued in Court.

A. I was; I know we were in a good deal of suspense, as to what the decision of the Court would be, upon the motion in arrest of judgment. I do not think I could say what the points were that were made in the argument; I did not argue it.

Q. Was it insisted upon, on the part of the defence, that that was not an indictment under the 35th Section, which provides for imprisonment for an attempt at assault with intent to murder, being armed with a dangerous weapon.

A. I think that was one of the grounds taken in the argument of the case.

Q. Do you remember the form of that indictment.

A. I cannot say that I do.

Levi Blossom was sworn and examined upon Specification 1, Article 2.

Q. Where do you reside.

A. I reside in Milwaukee.

Q. Are you acquainted with Judge Hubbell? A. Yes sir.

Q. Are you acquainted with Henry P. Hubbell, and Jonathan Taylor.

A. Yes sir, with both of them.

Q. Do you recollect the fact that Mr. Taylor had a judgment against the city of Milwaukee.

A. Well, sir, I knew nothing about it, at the time of the rendition of it.

Q. Well, at any time. A. Yes, sir.

Q. When did that fact come to your knowledge.

A. Well it was first brought to my knowledge by Henry P. Hubbell, sir.

Q. About what time.

A. Well it must have been some where about the last of December, or the first of January, 1851 or '52.

Q. Did you purchase that judgment of Henry P. Hubbell. A. Yes, sir.

Q. You may state the circumstances.

A. Henry P. Hubbell was owing me about $300, I think. I spoke to him about the payment of it, and in the course of the conversation, he proposed to sell me a judgment against the city of Milwaukee. About that time we were purchasing orders, for the purpose of getting them bonded. I supposed, at that time, the new charter would be passed, and the city indebtedness would, probably be bonded under the charter. I was purchasing city orders. I told Mr. Hubbell, I did not know what the judgment was, but I would look at it and see; he told me it was a judgment, given to Jonathan Taylor, against the city of Milwaukee, and said, that the amount was about $1000. We parted after that conversation, and either that afternoon, or within a very short time, he came to me, with an assignment of the judgment, and showed me the amount of it, from Mr. Taylor to him. I told him I would see Mr. Taylor and if the matter was all right, I would make a bargain with him for it; in the mean

time, I saw Mr. Taylor. I met him, I think, in the streets of Milwaukee, and asked him, if that judgment was all right, and what it was for. He replied, to the best of my recollection, that it was for work done, some two years before, that he had not got his pay for it, and that it was all right. I told him I merely wished to know if there were any offsets, or anything to interfere with the collection of the matter; and he said there was nothing of the kind, at all. I then saw Mr. Hubbell; I do not know whether it was that day, or within a day or two after that. I think he came to my office again upon the subject, and I bargained with him, for the judgment then. I think I was to pay him $850 for it. The judgment, as appears on the assignment, $1066,65. I did not pay him at that time. I said you had better get an assignment of that judgment from Mr. Taylor, to me direct, to save a multiplication of entries. He went off, and came back with this assignment, which I have in my hand, from Mr. Taylor to me direct; it is dated January 8, 1852. I have nothing to guide my memory, in reference to the matter, except that.

Q. I shall offer that assignment in evidence; but was it attested in the presence of any one.

A. I was not present when it was assigned; it was brought to me precisely as it is now, and has been in my possession ever since.

Q. On the execution and delivery of that assignment, what then.

A. I paid him either $200 or $250 of the amount. I think that, together with the indebtedness, left $300 that I was to pay him in a short time. I told him if he wanted a $100 or so, beyond what I had just paid, he might draw for it any time, and that I would pay it all in a very few days or weeks.

Q. Well, after the judgment was assigned to you, what did you proceed to do.

A. Well, sir, that was on the 8th of January; I do not know whether I received it on the day of date or subsequently. The first record I have of the matter, is made January 24th, 1852. I directed a letter to the Common Council, a copy of which I have in my hand. Mr, Blossom read the letter, as follows:

"MILWAUKEE, January 24, 1852.

"To the Hon. Common Council of the City of Milwaukee:

"GENTS:—I am the assignee of a judgment of Jonathan Taylor, against the city of Milwaukee, rendered November 4th, A. D., 1851, for one thousand and sixty-six dollars and sixty-five cents, and costs. I am anxious that you should take some immediate steps for the adjustment of this matter.

Very respectfully, your ob't serv't,

(Signed) L. BLOSSOM."

The next intelligence I had of it, I was informed by the City clerk, when I went to inquire after it, that it had been referred to a committee, and I found on examination of the records, a report of the proceedings of the Common Council; a copy of which I have in my hand.

(Mr. Blossom read the resolution, as follows:)

"Ald. DAGGETT, also from same committee to whom was referred the communication of Levi Blossom, setting forth that he was the assignee of a judgment of Jonathan Taylor, against the city, for $1,066 65 and costs, and asking that provision for the immediate adjustment of same, be made, reported thereon as follows:

"The committee to whom was referred the communication of L. Blossom, Esquire, report: That they have had the same under careful examination, and would say, that the city has a much larger account against him, by the way of taxes, than he has against the city, and by his calling on the City Treasurer, he, (the Treasurer) will be ready to balance accounts with him at any time."

Q. In that connection, I will ask you to state whether you had paid your taxes for that year.

A. I suppose I owed them some for taxes. The fact was, we had a large tax list that year, and about that time, the office was very much crowded with tax payers. I had often called at the office, to have them make out a list of my taxes. I had, I suppose, $3,000 or $4,000 of city indebtedness in my hands, besides this judgment, and I felt a little indignant at the report of the Common Council—in fact, very much so. I went to Mr. Daggett, chairman of the committee, and asked him for the papers, and took occasion to tell him that I thought he had acted like a puppy about the thing; that I did not ask any favors about it, that it was none of their business to drag my private affairs before the public in that way. I addressed him with a great deal of severity. I also met Mr. Randall, another Alderman, and I told him I thought he had acted like a contemptible puppy in the matter. I did not spare either of them. I told them they should pay this judgment to the uttermost farthing of it in cash, and that I would take nothing but money of them, and that they could not then pay it in city bonds. I immediately went to Mr. Watkins, and requested him to file a bill in chancery, against the city, and ask for an injunction against the city treasury, and I think also against Mr. Mitchell. I think I told them to enjoin everything they could get hold of, and to enjoin Mitchell, because I supposed him to be the depository of the city funds of the treasury. Mr. Watkins drew the bill, and I suppose it was filed. I do not know that I have seen it since. The next intelligence I had of it, was that the injunction had been granted. Some members of the Common Council spoke to me in reference to the matter, but I do not recollect who. I made the reply to them that I did not want anything but the money; but the money I was going to have, if I could get it. I received a copy of two resolutions that were passed upon this subject. One was dated February 12th, and the other, February 19th; the one dated the 12th, Resolved, that the City Attorney should take immediate steps to have the injunction dissolved, and that in the mean time, the city treasurer, with an exception or two, which was named, should make no disbursements in cash. This resolution I never saw, until after I was subpœnaed here as a witness. In the mean time, an application was made by Mr. Randall, as I was informed, to get the injunction modified. Mr. Watkins told me about it, I believe, and told me in substance, what it was, and said it was a perfect dissolution of it, if they succeeded in it. I told him I hoped they would not succeed in it, and cautioned him to be careful and not have any modification of it, if he could prevent it. He informed me the next day, I think, that the injunction had been modified so far as to permit the city to receive funds, but I think not to pay any out. I complained some of it. I thought the Mayor and Aldermen were inclined to cheat me out of it if they could, and did not know but they would succeed. In the mean time, within a day or two, Mr. West, I think, came to me in behalf of

the city, and said they would like to have the matter settled; that they had not the money to pay the judgment, but that they would give me $1,200 in city bonds, for the $1,066 judgment. I told him I would think of it, and see what I would do; I had sworn most solemnly not to take anything but the money, and I thought I should not. I felt as tho' they had treated me very badly about the thing, and I was not in very good humor. In a day or two, Mr. James Rogers came to see me; I do not know whether he was an alderman or not. I had quite a long talk with him about it. He plead the necessities of the city, and said, it was impossible for them to pay the money. I told him it was a mighty poor excuse, after treating me the way they had. I told him I had the stuff to pay the city what I owed them, and I wanted them to pay me. He finally said, they would give me $1200 in city bonds, and wanted to know if I had any objections to it. I told him if I took them, I wanted two $500 bonds, and one $200 bond, but I did not close the matter then. I then went and saw Henry P. Hubbell. The resolution was passed, I think, on the 19th, at the time of the payment. (Mr. Blossom read the resolution, as follows:)

"*Resolved*, That there be issued, by the Mayor and Clerk, general city orders, of an amount sufficient to pay the judgment, against the city, owned by Levi Blossom—that said orders be bonded, and placed in the hands of the Chairman of the finance committee, to settle said judgment, and that the amount be charged to the proper fund."

This was unlimited; they had gone into a negotiation to settle with me. I presume it was upon the passage of this order, that these gentlemen came to me. There was a less sum offered me at first, but there was a finality given. They thought I ought to accept the offer, and plead that the committee had acted ignorantly, and that I had better settle it at what was offered.

Q. Did you back out of what you had sworn to, or did you adhere to it?

A. I had obligated myself to pay Henry $300 more. I had sworn to take nothing but money of the City, and I did not like to retract what I had said upon the subject, so I said to Henry P. Hubbell, "if you will give $50 and my money back, you may have the judgment and take the bonds upon it; I never shall take the City bonds for it, although I can get $1200 for it." That day or the next day, he came to me and said he would give me the money and take the City bonds. He did so, paid me the money, and I told the clerk of the City, to pay him the bonds. I think that I gave to Mr. Hubbell the identical bonds. I find on looking at the records, that the order for bonds is receipted in my name for Henry P. Hubbell, and consequently, I think I did not go personally to get the bonds for him, but I was getting bonds and orders every day or two, and perhaps without having examined critically. I think I answered that I received the bonds from the City of Millwaukee. I bargained with them in that way; but I find I receipted upon them, for Henry P. Hubbell, and I presume he took them.

Q. Then you transferred these bonds to Henry P. Hubbell, and he took this judgment to the office.

A. I made no transfer farther than to take my money. I cannot find among my papers any order upon the City to pay him the bonds, but I probably met Mr. Johnson, and told him verbally, to deliver these bonds to Henry P. Hubbell. Mr. Johnson was then city clerk.

Q. You say you employed Mr. Watkins. A. Yes, sir.

Q. Who paid him for his services in that suit. A. I paid him.

Q. At the time of the commencement of the suit, and at the time of making that order by Judge Hubbell, modifying that injunction, were you the absolute owner of that judgment.

A. Yes, sir, just as much so, I thought then, as I was of any property I had in the world. I paid Mr. Watkins on the 5th of February $20, in full for his services in the matter. That was after the matter had been fully settled and closed.

Q. Did you, at any time, after you purchased that judgment, and until the final settlement of the matter, have any interview with Judge Hubbell about it, or in regard to any order he should make in that suit.

A. I never spoke to Judge Hubbell but once about it. I went first to see Henry P. Hubbell, and did not find him, I then asked the Judge, if execution had been issued upon that judgment. He said that none had issued. I then wrote to the clerk, Mr. Parker, for one.

Q. You had been told by Mr. Watkins, that that was necessary before a creditor's bill could be filed. A. Yes, sir.

Q. Had Judge Hubbell anything whatever to do with commencing that suit, or about any order made in the progress of it.

A. No, sir, not at all. I had no more to do with Judge Hubbell about it, than I had with you.

Q. Was not the order, which the Judge made, rather detrimental to your interests.

A. I complained to Mr. Watkins, about his modifying the order, but, said he, "you are mad, I do not think it will hurt you." I told him after the meanness they had been guilty of, I did not want to do anything to oblige them, but to make them pay me the money. I complained to him of the Judge's conduct.

Q. You say you are acquainted with Jonathan Taylor; I wish to ask you, if, at any time, since these proceedings were in contemplation, or since this impeachment has been pending, here at Madison, you had any conversation with Mr. Taylor, or heard any conversation in which he expressed his feelings against Judge Hubbell.

A. Well, I think, some three or four weeks ago, I did. Mr. Taylor came into my office and commenced talking with me about the matter of this judgment. He said, that matter was all straight enough, and, as far as he and Judge Hubbell was concerned, he did not deny that he got his pay all right enough; but, said he, the d——d rascal has cheated me out of $600 or $800 worth of city orders, and in reference to that transaction he had acted like a d——d villain and he would follow him up.

Q. Did he say how he would follow him up.

A. He said among other things that he always had great confidence in Judge Hubbell. I said to him I didn't know about any difficulty between him and Judge Hubbell. He was exceedingly boisterous and emphatic. He said "He was my attorney, and he was the last man in the world, that I ever expected would do so," and said he, "I will follow him up as long as I live, and you would do so too." He seemed to be exceedingly bitter, and said a good deal on the subject. Mr. Orton was present with me there.

Q. Have you any recollection of being at Judge Hubbell's room, and having a conversation with him there, Taylor being present, and taking part in the conversation.

A. I have no recollection of anything of the kind. I do not think I ever did.

Q. I will mention a circumstance, which may, possibly help you to recall it, if it is a fact. Do you remember being present on any such occasion, only you three together, talking about this matter, and of your proposing or suggesting that the assignment had better be made to somebody else.

A. No, sir, I noticed that in Mr. Taylors's testimony, and I deny it, as positively as he affirmed it. I could see no possible obejct of assigning it to anybody else, in the situation in which I was placed, unless I got my money.

Cross Examination.—Mr. Ryan. I think, Mr. Arnold, you said you were going to offer that assignment in evidence. (Mr. Blossom read the assignment.)

Mr. Ryan. You stated, Mr. Blossom, that prior to your receiving this assignment, you had seen the assignment of Taylor to Henry P. Hubbell?

A. Yes, sir, I think so. I think it was shown to me, and the amount of the judgment was mentioned. It was similar in its terms and language to this one.

Q. Why did you prefer an assignment from Taylor, than from Henry P. Hubbell.

A. Well, sir, only to avoid multiplication of entries; frequently when assignments have been made to me, if I could get the assignment from the first party, I have done so. I can tell no further about the date, than that the assignment makes it about the first day of January, 1852. I stated before the committee, if I recollect right, without having the papers before me, that it was the latter part of the winter or spring of 1852.

Q. Did you not know that it was sometime subsequent to the 8th of January.

A. I did not *know* that it was, but it probably was.

Q. Do you recollect how long you had the judgment, before you wrote the letter to he common council.

A. I cannot. But it must have been a few days.

Q. Then putting the two dates together, can you not say it was sometime between the 8th and 24th. A. Yes, sir.

Q. Is it not your impression, that it was nearer the 24th than the 8th.

A. No, sir. I have no impression about it.

Q. Mr. Blossom, you were examined before the committee of the Assembly, I believe? A. I was, sir.

Q. Did you give to that committee the same account of that transaction, that you now give.

A. Not in this detailed manner, in substance I did. If I stated anything different, I should like to correct it now, if I could know what it was.

Q. Did you ever state to that committee, any re transfer of your interest in the judgment, or the avails of it, to Henry P. Hubbell.

A. I do not think I did. I stated, if I recollect right, in answer to an inquiry like this—whether I let Henry P. Hubbell have what I got, in that judgment—I answered that I did let him have one of the identical bonds. I had he impression, that I went to the city clerk, and got the bonds for the

judgment, among other bonds. I supposed I had received these bonds upon the judgment, from the city clerk; and had I been questioned upon that point, before the committee, I should have sworn so, for I did not know but I did get the bonds, as I was getting city bonds there frequently, and I supposed I got all my city bonds myself.

Q. Did you state to the committee, that subsequent to the difficulty with the common council, you made an arrangment with Henry P. Hubbell, to take the judgment, and receive the bonds.

A. I think I did state something to that effect. I think, that was the substance of my answer, to some inquiries, that were put to me.

Q. Did you state to the committee, that you received the bonds of the city in payment of the judgment, and that you let Henry P. Hubbell have, in payment for the judgment, one of the identical bonds you received for the judgment.

A. I do not recollect how that was, precisely, but I presume I made such an answer to some enquiry, if you have it written down so, I should think it very likely that that was the substance of my answer.

Q. Did you not state before that committe, that, after you had the difficulty with the common council, you made the arrangement with Henry P. Hubbell, to let him have a portion of the bonds, which you should get from the city, in payment of the balance due him on the judgment.

A. I do not think I meant to be understood in that way. I might have said so, but as I said in my direct examination, after my difficulty with the city council, and after the trouble I had had about it, I went to see Henry P. Hubbell; I stated the facts to him—that they had proposed to me, to take $1200 in city bonds, for the judgment, but that I had sworn to take nothing but the money, and was not going to recall what I had said; if I stated that I did let him have the identical city bonds, I state now, as I should have stated then, if I had known what I was going to be called upon to say—the reason why I was mistaken, was, that I made an arrangement, if I took the bonds, to receive one $200 bond, and two $500 bonds; but it appears that he got a $1200 order receipted on the books. I do not think I ever received the bond, or that I ever had it in my hands at all; if I stated so before the committee, I was mistaken.

Q. Did you state last winter, that you had sworn that you would take nothing but money for the judgment.

A. I do not think I did.

Q. How came you then to state that you did receive city bonds in payment for this judgment.

A. I do not say that I remember of saying so. I presume I stated that I received city bonds, in fact, I did receive them under the arrangement I made with Henry P. Hubbell; and in anwer to a direct question, I should say now, that I received for that judgment, nothing but city bonds.

Q. Have you no data by which to fix the date of the purchase of that judgment except the date of that assignment, and the date of this letter to the Common Council.

A. Not that I know of, sir.

Q. Have you no entries in your books relating to it.

A. I do not know that I have.

Q. Have you looked to see.

A. I do not know that I have. I think not.

Q. You knew it was on this subject you were to be examined.

A. I think so.

Q. Have you in your books one single entry upon the subject of this judgment.

A. It is not a transaction that would go into my books. It might go into the books of the Bank of Milwaukee.

Q. I will ask you that question, then. Is there any entry in the bank book of Milwaukee. A. There may be.

Q. That is your office at Milwaukee, is it not.

A. That is my office, it is my bank, sir.

Q. Exactly so; and I suppose it would not be very difficult to say it was yourself.

A. Perhaps not. There may be a little difference, but it is not material.

Q. Do you recollect what you wrote to Racine for the judgment.

A. I do not recollect the substance of what I wrote to the clerk. I presume the substance was, an inquiry as to whether the execution had been issued, and a direction to send the execution, if there had been one issued.

Q. You can state nothing more about the contents of that letter, than what you have stated.

A. It would be impossible for me to come up here and state the contents of a letter I wrote a year ago last January. I do not recollect what I did state. I only recollect from the general character of the business I was transacting.

Q. Since this court has been in session, have you stated, here in Madison, that you let Henry P. Hubbell have that bond, and that you did not know how you got paid for letting him have it. A. No, sir.

Q. Have you stated anything to that effect, Mr. Blossom.

A. Well, sir, I do not know what construction may have been put upon my language, but I do know that I have made no such statement as that to any body, in any town.

Q. You say, that on the 25th of February, you paid Mr. Watkins $20 for his services in the matter. A. Yes, sir.

Q. Was Mr. Watkins your general attorney. A. Yes, sir.

Q. Was he doing business for you then, and had he been previously.

A. Yes, sir.

Q. Did you pay him at that time, for any other services, except those in this suit. A. I think not.

Q. Were you not, at that time, owing Mr. Watkins for other services rendered before that time. A. I do not know that I was.

Q. Did Mr. Watkins render you any bill.

A. Well, sir, I will tell you the facts; if I employ any body to do a special work for me, I generally follow it up, and when it is done, pay it up. That is the way I did with Watkins. When I got the money of Henry P. Hubbell, I went to Mr. Watkins, and said, "If this matter has been settled, I want to pay you for this particular matter," and it is only by referring to his books, that I ascertained this entry. I got that entry from Watkins' books, and I recollect of going up, and then paying him.

Q. Is there any entry in your books of the payment of that $20.

A. I presume not, sir.

Q. Mr. Watkins' office is over your bank, is it not. A. Yes, sir.

Q. Do you recollect, at the time you paid that money to Mr. Watkins, of going up into his room, to settle that matter. A. I do.

Q. Do you recollect the conversation that took place at that time.

A. No, sir.

Q. Do you recollect saying to him, that you desired to settle up that matter, and his rather putting it off, and saying that it was of no consequence, or something like that.

A. I do not know; he may have said so.

Q. Do you recollect of insisting upon paying him, and of either naming, or handing him that amount as settling that matter.

A. Well, sir, I do not know that I did.

Q. At the time you went up to Mr. Watkins in that way, and paid him that $20, was not Judge Hubbell either in your bank, or in the street in front of it. A. Not to my knowledge.

Q. Could he have been there without your knowledge. A. He might.

Judge HUBBELL. Have you any idea that I was there.

A. I have no idea about it.

Mr. RYAN. Was that money so paid, your own money. A. Yes, sir.

Q. And not accounted to you, by any person.

A. No, sir. I want the privilege of explaining the reason why no entry appears on my books. I go, generally, to my safe or my office, take $50, or $100, put it in my pocket, make an entry of the amount taken, and never make any account of that farther until it is gone. I keep no detailed account of every sixpence, when I pay it out.

Q. Do you make entries of a $1,000.

A. I presume I do generally. When it comes through that channel, I presume I always enter it.

Q. Do you recollect stating to the committee, last winter, when you were here examined, that you had your assignment from Henry P. Hubbell.

A. I did.

Q. Is that an assignment from Henry P. Hubbell.

A. That is an assignment executed by Jonathan Taylor, and delivered to me by Henry P. Hubbell. I take it, there is a difference between execution and delivery.

Mr. RYAN. We have one more question to put on the strength of a certain paper that's not in the court room.

Mr. KNOWLTON. Can you not ask the question without having the paper.

WITNESS. I suppose it is in reference to the letter to Mr. Parker.

Mr. RYAN. No, sir, it is not.

WITNESS. I am glad to hear it.

Senator STEWART. Did you, at the time of receiving the assignment, give him any note for the unpaid balance, or did you enter it in account.

A. I presume sir, I did not give him any note and I do not know whether it was entered on account or not.

Senator STEWART. What was the reason you sought Henry P. Hubbell to re-assign this indebtedness, if you had already made an arrangement to take bonds, and how did that save you from violating your oath?

A. I wish to answer your first question further, the understanding was like this. The purchase was made to be paid in cash, except the three hundred dollars he owed me. I said to him here is $200 or $250, in cash, and the balance I would pay him in two or three days, at his directions. If he should meet me in the streets and ask me for it, I should take out the money and pay him. I think the balance was the specific amount of $300. Now in reply to your second question, I do not know that it did save me from violating my oath. Perhaps, I might say that I had altered my mind. I went to Henry P. Hubbell, because I would not go and get the bonds myself, I would not have the reputation of taking the bonds after scolding them as I had, and I do not think any of you would, if you had heard the dialogue I had with them. I would not have taken them hardly to save the debt—with their knowledge, at any rate. If the naked fact had been presented to me, to take them or fight it out in the suit, I do not think I would have taken them.

Senator STEWART. I asked that question because I understood that you had already made the arrangement to take them.

A. The proposition was made to me, and I went off to make the arrangement with Henry P. Hubbell. I did not agree positively, to take the bonds, and then I made the arrangement as I have stated, by which I did not take them. I got my money and did not take them.

Mr. ARNOLD. In the city of Milwaukee, among its business men, is not your word good for any amount you would give—just as good as a note.

A. I think you had better ask that of somebody else.

Q. Does your word pass there.

A. If I should promise you three hundred dollars to-morrow morning, I think you would take it.

Q. I ask that in regard to your giving your word to Henry P. Hubbell. Now in regard to the payment of lawyer fees to Mr. Watkins—are you now sure that Judge Hubbell was not up there, and that he did not slip $20 into your hands.

A. Judge Hubbell was not there, and knew nothing about it. I don't believe he knew anything about it till now.

Mr. RYAN. I wish to retain this assignment in Court. (Judge Hubbell here admitted that the body of that assignment was in his hand-writing.)

The witness objected to leaving the assignment.

Mr. ARNOLD. Will not a copy do you?

Mr. RYAN. The reason why I desire to keep the original paper, is that I shall have to submit the original paper to a witness, to question him about it, and I suppose no copy would answer my purposes.

Mr. ARNOLD. If Mr. Blossom will entrust it to me, I will see that it is returned to him.

WITNESS. If the paper is properly in Court, I suppose it will remain here, if not I shall take it home.

Mr. RYAN. Mr. President, I will say that it is indispensable to have that paper in the control of the Court.

Mr. KNOWLTON. If the gentleman would state for what particular purpose he wishes it retained, perhaps we might obviate the necessity by making some admission.

Mr. RYAN. No admission that you would make, would obviate it.

Senator DUNN. I presume there is no question, but that it is at the option of a party to raise an objection to producing private papers in Court. If, however, if he introduces them voluntarily, as part of the evidence and records of the Court, it strikes me that it is so in this instance; and the Court may make an order that he shall receive the paper when it has properly performed its office. This paper is now, as I understand it, in the possession of the Court.

Mr. ARNOLD. I will ask one question more, Mr. Ryan, of the witness. Was the name of Henry P. Hubbell, the subscribing witness, signed to the assignment, when you received it.

A. I have no doubt of it. I do not think it has been altered a particle. I do not think for the last year, it has been out of my safe, till I took it out to bring it to Madison.

Mr. RYAN. (Handing the witness a paper.) Was that, your deposition, before the Committee last winter.

A. Yes, sir.

Q. At the time of your examination before the Committee, you signed your name as it was taken down, did you not.

A. That is my signature, sir.

Mr. RYAN. To save any objection being taken, if it was done hereafter, we now propose to give the deposition of this witness, as testimony before this Court, as it was given before the examining Committee of last winter. The reason why we do it now, Mr. President, is in order to save any difficulty that might arise if it was done hereafter. They have now an opportunity of putting questions to the witness, in reference to it, which they might not hereafter be able to do, because Mr. Blossom most likely will be gone.

Mr. KNOWLTON, Upon what legal principle, can that be offered in evidence.

Mr. RYAN. Upon the principle that a paper made under oath, in reference to the same subject matter upon which the witness testifies, and which is different from it, may be given in evidence to rebut that testimony.

Witness. I would like very well to haveit read, myself.

Mr. ARNOLD. I do not understand, Mr.President, that this is proper evidence to be introduced either now or at any future time, when the other side shall have an opportunity of introducing rebutting proof. The foundation for it has not been laid. Setting aside all other objections, I take it that the previous account, given by the witness, cannot be given in evidence. The witness must be interrogated as to whether he previously gave an account of the same transaction; to whom and when, and whether it differed from that now given; and then his attention must be called to what his statement or testimony has been. This is the rule that must apply, to make this deposition evidence in any event. But it strikes me there is an objection of another character, which it is my privilege and my duty, to urge here. The paper now produced here, and proposed to be read, is a part of the testimony taken before the Committee of the Legislature, if I understand the proposition; and it is the testimony of Mr. Blossom, the witness at present on the stand. Now, sir, we have at an earlier period in this case, made every effort in our power, by persuasion, by begging, and by appealing to the authority of this Court, to get possession of the testimony that was taken before that Committee. We desired it for the purpose of our own information, and for the purpose of enabling us to know before hand, what witnesses we should want; in other

words, to prepare our defence. That request has been refused to us. We have not had the opportunity of having that testimony before us, to use it in the cross examination of that array of witnesses that have been produced here on the other side; yet, because a witness has been produced by the respondent, the Managers seek to introduce his testimony before the Committee, with a view to impeach his testimony before the Court; with a view to show that he has given on a previous occasion, a different account of this transaction. Is this secret testimony, taken before that Committee, to be kept as a secret cudgel, a private weapon, concealed arms, which this prosecution is to be permitted to carry about them to wield over us, and to bring down upon us whenever it may suit their pleasure, while we are to be deprived of any access to it for that purpose, or for the purpose of trying our defence. It strikes me this is not fair. We stand also upon the legal point which I raised in the beginning of my remarks.

Mr. RYAN. In regard to the legal point, the examination of the witness, I think the gentleman's memory will serve to assure him, that I have examined the witness upon the very points that make it proper to introduce this testimony.

Mr. ARNOLD. Upon one point, I think you did.

Mr. RYAN. Upon several, sir.

Mr. KNOWLTON. You may read those parts of the deposition, which you asked him about.

Mr. RYAN. I have asked the witness questions upon all the points in his deposition. I asked him the general question, whether his account was the same now, and last winter. I asked him the particular question, when I perceived a difference between his present and former statement; I again asked him the whole question, as to the general identity of the statement; but I think all that is mere idle formality.

Mr. KNOWLTON. Suppose you submit the paper to Mr. Blossom, and then ask him the question, whether he now states anything differently.

Mr. RYAN. I adhere to the offer I have made. In regard to the other objection, that it is a cudgel, which we hold over the defence. I suppose it is a matter of every day practice, that a prosecuting attorney is accustomed to have the testimony taken before the grand jury, lying before him; and the defence have no right to call for it, and never do call for it; and yet the prosecuting attorney has the power, when a witness comes and swears differently than he did before the grand jury, to question him upon what he did swear to before the grand jury; I suppose that is common, ordinary, criminal practice, and we resisted the gentleman's having a copy of the testimony taken before the committee, for his information, upon precisely the grounds that a district attorney would resist an application of the Court, to make him hand over testimony given before the grand jury, to the defendant's counsel; and I now seek to use the account given by this witness, before that examining committee, for the purpose of rebutting this testimony. I do not know that I could explain the matter more, by multiplying words.

Mr. ARNOLD. I was speaking mainly to the point of the fairness of this mode of proceeding, so far as we are concerned, and I will illustrate by putting a case. Suppose some witness before that committee was called on the stand here—we will take for instance, one of the females whose name is mentioned in

these charges—suppose, in her examination before that committee, she had testified throughout in a manner entirely friendly to Judge Hubbell, suppose she utterly denied any indecent interview, any improper conversation of any kind whatever, and bore testimony to his good character in every respect; suppose, subsequently to that time, she had become offended with him, or had been bribed and had come into this Court, and testified to the reverse of what she before testified, and her testimony sustained the infamous charges that are contained in that article; could we confront her by showing what she testified to formerly; certainly not. Why? Because it is a secret tribunal. Because we are refused access to the testimony, and because we cannot confute their witnesses in the manner they seek to ours; I do not know that there is any principle of law, that will sustain any unfairness like that.

Mr. Ryan. I will state that the respondent has the same remedy which a criminal upon an indictment has to contradict a witness.

Mr. Knowlton. I think the gentleman is mistaken in relation to the rule of law, as to the admissibility or the applicability which he undertakes to apply to this particular paper. So far as particular statements are concerned, made by a person who has been previously sworn upon the same subject matter, I apprehend that is never evidence in favor of one party, unless the other party are at the same time entitled to use it. This Court has never decided that they can use it for these purposes and that we are to be shut out, therefore the rule the gentleman contends for, is not applicable to this particular paper.—Now we know that statements made in open Court, are proper subjects of proof. The witness can be interrogated concerning them. Other witnesses can be called upon to say or do what they understood the witness to say or do, and therefore the parties stand here upon an equal basis. But I ask you how stands the respondent in this cause? Is he in an attitude to call upon anybody to disprove what appears in that paper. There is no analogy between the principle of law announced by the counsel opposed, and the question now before the Court.

Senator Stewart. I wish to enquire whether the counsel for the Respondent objects to this paper for the reason that it is offered in an improper stage of the proceedings?

Judge Hubbell. I wish merely to define my position upon the question before the Court. As an individual, I am perfectly willing as I understand the witness' statement, that this paper should be read. I have stood merely upon a point of law in production of a witness as I would do if I were sitting upon a bench, as I have always felt bound to do in all cases. The rule I understand to be inapplicable and never to be varied from, by any Court—and it is this; that the statements of a witness, sworn in any case when made out of Court anterior to his oath in the case, may be given in evidence to show that he has stated something contrary to what he swore to, when acting as a witness; but before you can pursue that unquestioned right, to show that he has at any other time, stated the matter differently, you are bound, and the rule is inflexible; you are bound to show to the witness, that you intend to call his attention to that point, you are bound to ask him if he ever made a different statement upon that point—so careful is the law of the rights of every witness, when testifying in Courts of justice; and if the witness then states that he does not recollect, or that he did not say it, you may go on and make the proof

as you please by witness or oral testimony. But if the witness says that he did state it, he then has the right—and it is an unquestioned right; I never heard it disputed; and the counsel before me never heard it disputed—he then has the undoubted right to give his reason why he stated it differently, from what he now states it. I am stating a principle of law. I called out nothing of this witness' testimony, I knew nothing he was going to say. That is a matter of his own, not mine; but if that is the principle of law, apply the principle here in his favor. I do not understand that the witness was interrogated as to one single point before that committee. He may have been; but I understood he was interrogated simply, as to the point whether he had not stated before that Committee, that he received the bonds from the City Council, and transferred them to Henry P. Hubbell. It is not my purpose, however to remark upon that. I merely wished to assert this as a principle of law, and I never will sit silent and see principles of law trampled upon, in the person of any body.

Mr. RYAN. I will merely state that I did ask the witness several questions, that were pertinent to his previous statement. I asked him whether he had stated in that examination, that he had the assignment from Henry P. Hubbell.

Mr. ARNOLD. Well, he answers now as he did then.

Mr. RYAN. That is a matter to be seen. (Mr. Ryan here repeated several of the questions he had asked the witness, and proceeded:) These are the questions which I recollect now, that I asked him, and these certainly prepare the way for the introduction of his statement, before the Committee.

Senator WAKELY. I understood the counsel for the Managers, to propose to read this statement now, and then examine the witness in reference to it.

Mr. RYAN. I propose to read it now, so that the witness may have an opportunity to give an explanation, rather than keep it back till he is gone, when he can give no explanation.

The proposition as submitted in writing, by Mr Ryan, was as follows:

"The Managers offer to read the deposition of the witness, Levi Blossom, given before the Committee of the Assembly, on the same subject as his present testimony."

And the question, shall said deposition be read in evidence, having been put to the Court, it was decided in the affirmative, ayes 20, noes 3.

Mr. Ryan here read the deposition as follows:—

"Levi Blossom being duly sworn, upon his oath, says: I had an assignment of a judgment in favor of Jonathan Taylor, vs. the City of Milwaukee. My impression is that I had said assignment of Henry P. Hubbell; a creditor's bill was filed against the City, for the collection of said judgment; the judgment amounted to about one thousand or eleven hundred dollars. I negociated with H. P. Hubbell. Had transactoins with H. P. Hubbell, who was then owing him some three hundred dollars; took the judgment at a discount on said demand, making further advances. Owned the judgment absolutely, did not advance the whole amount at once, for the judgment, but paid $200 or $250, in addition to the amount owing from H. P. Hubbell; after the filing of the creditors bill, I received the bonds of the City, in payment of the judgment.—Subsequent to the time I had the difficulty with the City Council, I made an arrangement with H. P. Hubbell, and did let him have a portion of the City

bonds, which he took on a final settlement of the transactions between said Hubbell and witness. I had a conversation with Judge Hubbell in relation to the judgment. I had the conversation after the judgment had been assigned. I had no conversation with Judge Hubbell, during the pendency of the proceedings. I let H. P. Hubbell have a bond in payment for the judgment. I think I gave him one of the identical bonds which I received from the City on the judgment."

Mr. RYAN. When you were examined before that committee, were you sworn to tell the truth, the whole truth, and nothing but the truth, about the matters which should be enquired of you.

A. I presume I was sworn. I do not recollect the form of oath.

Mr. ARNOLD. At the time you were examined before that committee, had you directed your attention particularly to this transaction.

A. I had not, sir.

Q. Had you referred to the records of the Common Council, or any memorandums of your own, such as you have done here.

A. I had not, sir. It was a mystery to me, till the time I arrived here what earthly object they could have in summoning me. I did not know of any matter connected with it.

Q. Are you engaged in very extensive business operations in Milwaukee.

A. I am pretty busy, generally, when I am at home. My transactions have been from $30,000 to $50,000 a year, for the last ten years.

Q. If you were called upon now, suddenly, to give a detail of some of your business operations, do you feel confident that you could give the whole, accurately, in detail.

A. No, sir, I do not think I could. If my attention was called to it, and I had time for reflection, I might do it; and my recollection in that sense, is perhaps as good as that of the generality of men. I stated before the committee, that I received city bonds; and such was my recollection in answer to the question at the time. I see that I say in this deposition, or that is the way they have got it down—that I let Henry P. Hubbell have a portion of the city bonds. Now, I presume I answered that question in the language put down here. If I had been called upon to answer that question here, I presume I should not have answered it in precisely the same language, but that I did let Henry P. Hubbell have the identical property that I received for the judgment. I found afterwards, by examination of the records, a somewhat different state of things, and if I had been called upon three days after that, I should have been able to detail all the transactions as I have to-day; but when I came before the committee, I answered the question honestly, as I have to-day.

Q. The difference is simply this—instead of delivering the bonds to Henry P Hubbell, yourself, you fixed it so he could receive them. A. Yes, sir.

Q. I think that deposition makes you say you transferred one of the bonds to pay him for the assignment.

A. It says that I did let him have a portion of the city bonds. I think that is my statement. I did suppose then, and did not suppose the fact was different, that I did let him have the identical bonds. I knew I had a great many transactions about that time, and I recollect very distinctly, of going to Henry, and making an arrangement by which he had a portion of the city bonds, and I answered the question as I presume it is put down here, but upon

reflection, I am confident the transaction is verbatim as I have stated it to-day. I paid him not in city bonds, except on the re-assignment; and he paid me money instead of *my* taking the city bonds, and that is what I meant to have the committee understand, precisely.

Q. At that time, when you were before the committee, you made your statement as well as you then could recollect. A. I intended to, and I think I did.

Q. What do you mean by advances in this deposition.

A. I advanced Henry P. Hubbell some $250 on the judgment when I took it of him—I think $250 was the amount, precisely.

Mr. RYAN. Do you recollect when you were examined before the committee, of reading this deposition over, before you signed it?

A. I think I did, and I think I said that that was not all I said but that it was the substance; and I now appeal to Mr. Sanders to-day, whether I did not make some such remark.

Q. Do you recollect stating that the deposition read, that the judgment was $1,000, or $1,200, and you corrected it by putting in $1,000, or $1,100.

A. I do.

Q. In regard to the conversation which you say you had some weeks ago with Mr. Taylor, did you state that Mr. Taylor detailed to you the transaction about the city orders, and will you state what he did state about that transaction.

Mr ARNOLD. That is objected to.

Judge HUBBELL. If you could get at the whole of that transaction, I would not object to its coming out.

Mr. RYAN. But, inasmuch as the witness has detailed a part of it, that is the very thing we wish; that he should detail the whole.

Mr. ARNOLD. The reason of the objection is, that it is irrelavant; and another reason is, that it affects the respondent in such a way, that he would be obliged to beg the opportunity to place the whole matter before the Court, that they might see that his conduct in the affair was entirely unexceptionable. Indeed, at an early stage of the proceedings, when Mr. Taylor was on the stand, he was asked the same question about his having hostile feelings towards the Judge, and making use of hostile expressions, and he said he had felt so in regard to a transaction of City orders, in the hands of Mr. Orton, and the learned counsel then asked him the same question; "What was the difficulty between you and Judge Hubbell about;" and I objected to the question on the ground of its being irrelavant testimony. The Court sustained the objection, and it was ruled out. The witness, Taylor, was then asked whether he had a conversation with Mr. Blossom, in which he had made threats against Judge Hubbell. He said he had had a conversation with Mr. Blossom, not about this matter of impeachment, but in regard to the bonds in the hands of Mr. Orton, in which Judge Hubbell was attempting to cheat him. I then took the objection to this question, and it was sustained.

Mr. RYAN. I have found Taylor's printed testimony. This is Taylor's examination, and this is the objection as I find it reported in the "Argus and Democrat." (Mr. Ryan here read several questions and the objection referred to, from our report.)

Mr. ARNOLD. Well, it is making a collateral issue here, that will take time to no profit.

Mr. RYAN.. I do not desire to make a collateral issue, and I have hitherto tried to avoid such issues; but I take it to be a rule of law, never to be varied from, that a part of a statement should never be given in evidence without the whole of it can be so given. No man on earth would be safe, if you were allowed to give a portion of communications and statements, and conversations, without giving the whole; and I suppose that to be an invariable rule. I recollect once, that there was a prosecution for treason; I do not know as I can detail the circumstances perfectly, but at all events, a man was speaking of his sign, he being a tavern keeper, and it was shown in testimony that he proposed to take the King's head off; alluding to his taking a painting in likeness of the King's head, from his sign, and the court would not allow him to give the explanation that he was talking of his tavern sign; but from that day to this, you could not be allowed to give a part of a conversation without giving the whole of it. Now, the witness is asked whether he heard Taylor say such and such things. The witness answers that he did, and goes on and tells that Taylor related to him the transaction about the orders, and that he said he intended to pursue him. Now, I propose to show the whole of Taylor's conversation before the witness, as well as what the witness has testified to already; and if it shall appear that it is a mere controversy about business, then it will appear that what Mr. Taylor testified to the other day, was only judicial proceedings that he threatened, and no other.

Mr. ARNOLD. I did not ask the witness for any conversation between him and Mr. Taylor. I asked him barely whether he had heard Taylor make any threats against the respondent. He premised his answer by stating the circumstances, and then on that occasion, when talking about the orders he made these threats. I believe that is, the fact. It was a voluntary statement by the witness, defining the occasion on which the threats were made. (Mr. Arnold here read the questions alluded to, from our printed report of Taylor's testimony.) Now, the object of asking that of this witness, was to show that Mr. Taylor did make threats against this respondent.

The question as follows: "What did Jonathan Taylor say to you in his conversation, about which you have testified, in answer to Mr. Arnold?" was submitted to the Court, and the question, shall this interrogatory be put to the witness, having been put, it was decided in the affirmative. Ayes 13; noes 10.

Mr. RYAN. Will you state now, all that Mr. Taylor said?

A. To the best of my recollection, Mr. Taylor came into my office and commenced talking with me about his difficulty with Judge Hubbell. He said, that so far as he and that judgment were concerned, it was all right enough; he sold it to him and got his pay for it: "but" says he, "he treated me like a d——d villain in reference to some orders in the hands of John Orton," and said he, "don't you know about it?" "No," I said, "I do not." He then said he had a job in the city, and he wished some advances made upon the city orders, to enable him to do the work. He went to Orton from time to time, put the orders into his hands, and got advances upon them. The time was about to expire for which they were pledged, and he applied to Judge Hubbell, as his friend to raise the money, and redeem the orders from Orton. Orton, you know is a sharper, and I knew he would not let me have them quicker than the devil would." I have forgotten what I replied, but I believe I concurred. He said, "I would thought of you or any other man, cheating

me sooner than Judge Hubbell; but I went to him, because I always put confidence in him, and had hitherto acted honorably by me. He got hold of the orders and got 'em bonded and never paid me a d——d cent." He said they were some $600 or $800, or more in amount. "Yes," said he, "after the thing was fixed he coolly and deliberately told me he would give me $175," or $275, I do not recollect which; "and," said he, "that is all I ever got out of the d——d scoundrel, and if he had treated you in the same way, you would follow him as as long you lived, wouldn't you?" "Well," I said "I didn't know." "Well," he said, "that didn't alter the matter, as far as Judge Hubbell was concerned." He repeated the statement two or three times, and went on farther, and in more language than I have, and used many pretty severe oaths.

Q. Did he state anything about any proceeding in the United States Court to require him to account for those orders?

A. I do not remember that he did. He did most of the talking, and I did some of the laughing, and responded occasionally to what he did say; and when he got through, after a pause of a few moments he went off. I thought his conduct was quite singular. When he asked me if I did not know of the difficulty, I told him I did'nt know anything about it, though I do not know but I had heard some rumors of the transaction between him and Judge Hubbell.

Mr. Arnold. Can you state the real facts of that transaction, between him and Judge Hubbell?

A. I know nothing, only what he told me.

Q. You never heard a full history of the facts.

A. I do not know that I have. I do not know, but the other day I had some conversation with Judge Hubbell about it, but no other.

Calvert C. White recalled, to the 1st Article.

Q. Were you deputy clerk of the Circuit Court of Milwaukee county, from 1848, to 1852?

A. I was.

Q. Do you recollect the trial in that Court, of Theodore Perry *vs.* the Comstocks.

A. I do.

Q. How long did that trial occupy?

A. Some several days—four or five days—or perhaps more.

Q. Do you recollect how long the Court sat, on the last day of that cause?

A. Yes, sir. It sat from half past 8 in the morning till 8 at night, with no adjournment, for dinner. I know that they were in a great hurry to finish the case, and they sat very late.

Q. What day of the month was that case concluded on?

A. I think it was the 20th of May.

Q. What day of the month did the Court adjourn upon.

A. On the 12th or 13th of June.

Q. On what day was the opinion delivered in this case?

A. On the 9th of May, at the opening of the Court in the morning.

Q. Was the Court unremittingly occupied from the 20th May, till this case was finished, with jury trials.

A. Yes, sir.

Q. Please name some of the cases?

A. Well, there was the case of Shepard & Bonnell against the Milwaukee Plank Road Company; that took a day, and the jury were discharged at a late hour in the evening. There was the case of Jehiel Smith for adultery. The next case was Reed *vs.* ———.

Q. What amount was involved in that suit?

A. About $800; that case occupied two days. Another case was that of the State against Patrick Conaughty. That case might have taken five days; I think, however not over four. There were several indictments tried. There was an action of replevin of goods; I think that took two days. There was an indictment of Lawson for rape; that took two days. There was an indictment for forgery tried, in which a motion for arrest of judgment was argued. There was a chancery case called, of Orvis *vs.* Rice. There were several motions argued during the morning hour. The business was as important and pressing as was ever transacted in the Court, at least while I was there.

Q. How many hours a day was the Court generally in session?

A. From half past 8 or 9 in the morning, till six or seven in the evening, and when jury trials were on, even later than that.

Q. Do you know of the Judge sometimes pressing jury trials, as late as 12 o'clock?

A. Yes, sir.

Q. How many weeks in the year did Judge Hubbell try causes?

Mr. Ryan. I have listened with a great deal of admiration, during the examination of this witness, to know what you are driving at.

Mr. Arnold. Well, I withdraw the question.

Adjourned till morning.

TWENTY-FIRST DAY.

Thursday, June 30.

MORNING SESSION.

Colonel John Crawford was sworn and examined upon specification 9, Article 11.

Q. Colonel Crawford, where do you reside?

A. I reside in Wauwatosa, Milwaukee county.

Q. Do you recollect a case, formerly pending in the Circuit Court of Milwaukee county, in which Truesdell was complainant, and Richards defendant?

A. I believe I do, but I had mostly forgotten the names of the parties in the suit. The plaintiff's was a foreign name to me, but I recollect the suit you have reference to.

Q. Was it a suit in which Mr. Eli Thorp was interested?

A. Yes, sir. I think Eli Thorp, and Rice, were concerned in the suit.

Q. Were you one of the jury in that case?

A. I was in this trial referred to. I think there has been more than one trial.

Q. Did the jury agree in this trial when you were a juryman?

A. They did not.

Q. What day in the week, and what time of day, was the case submitted to the jury?

A. It strikes me it was Saturday evening.

Q. Did the court adjourn after submitting the case?

A. Yes, sir.

Q. What instructions did the court give you, in case you should agree upon a verdict?

A. I cannot say what instructions he did give us; but he instructed the officer who had charge of us. Those instructions were, that if we agreed, the officer was to ring the bell, to either alarm him, or inform him that we had agreed. I am not positive whether I heard that instruction given. I got that impression from some quarter.

Q. In what room were you left.

A. We were left in the court room.

Q. Did you ring the bell to alarm the Judge?

A. *I* did not.

Q. Did the bell ring, or was it by your direction?

A. Not by my direction. I think it was rung by the officer in charge. We were not where the rope was, nor where the bell was.

Q. About what time was the bell rung?

A. It strikes me it was pretty near the time I began to feel sleepy. I should think it was near the middle of the night, perhaps a little before; I can't be positive about that.

Q. When the bell rung, had the jury agreed?

A. They had not.

Q. Did the Judge go to the court house upon the ringing of the bell?

A. Yes, sir, the Judge appeared in the court house, pretty soon after the ringing of it. I should think he had about time to come up from the States.

Q. Did he come into the jury room?

A. Yes, sir.

Q. What took place after he entered the room.

A. When the Judge first entered, I think he said something to some of the jury about the case. I did not say anything to him, particularly.

Q. Did he ask the jury whether they had agreed?

A. I think he did. I know he asked me that question after a while, though not when he first came in.

Q. What did he finally do?

A. He discharged us.

Q. What was said by him, in regard to discharging you?

A. Do you want me to give a history of his coming in?

Q. Yes, sir.

A. When he came into the court room we expected him. We were not there trying to concentrate our views. He came in in a considerable of a fever. Why, says he, you have alarmed the whole city with this bell. I do not know that he directed his remarks particularly to me. Said he, there is an alarm of fire, and he seemed to be considerably out of breath, on coming in. Then he says to me—Do you consider that there is any probability of your agreeing on this verdict. I told the Judge, I thought there was not much probability of our agreeing. I did not feel at all guilty about the alarm of fire. I wasn't disturbed at all. I didn't feel anything nervous. I had enough to do to attend to my duty.

Q. What was your language to him about not agreeing?

A. I told him, I thought there was very little prospect of our agreeing. I very well recollect that I should not have yielded the point I had in view; and I thought there was very little prospect of convincing others in the straight path. I do not recollect that I used that language to him, but used as good language as I was capable of. The other jurymen were more anxious about hearing the bell ring, than I was.

Q. Were you not all lying down and taking it very cosily?

A. I think that was an imposition upon the other part of the jurymen. I hardly ever lie down in the jury room, unless I am out three or four nights. (Laughter in the court room.) I do not mean to make any fun about it. I feel very serious about it myself. (More laughter.)

Q. Did the Judge in any manner tamper with the case after he came in?

A. I heard nothing more than what would be very proper. He was talking with the other jurymen mostly, and did not talk as though there was anything secret going on. I thought the reason of his speaking to me, was, that he was acquainted with me. I think I had said nothing to him, until he asked me that question.

Q. Do you recollect of his saying any thing at all about the merits of the case?

A. Oh, nothing at all. He did not ask how we stood, which is a common remark among jurymen. I did not hear anything of that kind; I should have remembered it if I had, because I should have thought it not a very proper remark for a Judge to make.

Q. When he discharged you, did you all go out together?

A. I think we did pretty much. I tho't I would make my tracks off pretty soon. I thought it was about the time of night to close up our business.

Cross Examination.—Q. How long was the Judge in that court room with that jury, before they were discharged?

A. Ten, or perhaps fifteen minutes; it might have been more, but I do not think it was.

Q. Was anybody else in the room when he came, except the jury?

A. I did not notice anybody but the officer; I couldn't tell exactly about that, he was in and out.

Q. Was the door shut?

A. I do not recollect. I remember he was locking it and unlocking it. I thought he was our keeper and not we him.

Q. When the Judge was in, was he locking and unlocking it?

A. I do not know; I had more anxiety about the Judge than about the officer.

Q. Did you hear anybody on the outside, trying to get in?

A. I did not hear anybody.

Q. I suppose you could judge of the difficulty of getting out, but not of the difficulty of getting in. Did you meet Mr. James and Mr. McArthur when you came out?

A. Not that I know of.

Q. Were there eleven obstinate, wrong minded men on that jury?

A. No, sir; if anybody knows that, they know more than the jury did. I think the jury were very equally divided. We were as near as seven to five; I

wouldn't wonder if I was on the weaker side; at least I was not alone; if anybody says that, they have got me to contend with.

Q. I am sorry for them if they have.

A. Yes, I believe they would have a pretty bad snag.

Q. When the Judge was in there, was he sitting on the bench?

A. I think he did not sit down.

Q. Was the Court opened at all? A. I think not.

CHAUNCEY ABBOTT, sworn and examined to article 7, specification 3 and 9.

Q. Where do you reside?

A. Here in Madison.

Q. Are you acquainted with W. W. Wyman? A. Yes, sir.

Q. Do you know Eliza C. Wyman, his former wife?

A. I have seen her, but have no personal acquaintance with her.

Q. Do you recollect a proceeding in the Circuit Court of Milwaukee county, for a divorce on the part of Mrs. Wyman against Mr. Wyman?

A. I recollect that there was such a proceeding, and I believe in Milwaukee county.

Q. Were you attorney for Mr. Wyman? A. I was.

Q. Do you know of any collusion between Wyman and his wife, for the purpose of obtaining that divorce, with the knowledge of the Judge or without it?

A. No, sir, I do not know of any.

Q. Did you appear for Mr. Wyman, at the taking of testimony in that case?

A. I appeared once. Mr. Wyman requested me to go to the office of Collins and Smith, and inform him what the testimony was. My impression is, that he instructed me not to examine the witnesses. I cannot say whether I did enter an appearance or not; my impression is that I did not, and that I reported to him the substance of the testimony which was taken.

Q. Was the matter of alimony arranged between the parties out of Court.

A. I had a negotiation with Mr. Collins upon that subject. I do not recollect that that was in Court. It was in the Court House that the matter came up, and the subject of alimony was spoken of, and I recollect that $100 was proposed, and the Judge was asked, or it was said, that that amount might be entered for alimony. The Judge said that amount seemed small but if it was satisfactory to the parties, he did not know that it was objectionable. I think that was in the Court House here, but I think it ended in Milwaukee.

Q. Was you here when the decree was read.

A. I was not.

Q. It contains no provision whatever on the subject of alimony; was not that left by the Judge because it was arranged by the parties themselves.

A. I believe that is the practice, alimony may be settled afterwards. My recollection is that it came up here in the Court house. It was some years ago and how it came up, I could not state.

Cross Examination.—Q. Did you mean to answer Mr. Arnold that you knew of no collusion in that case.

A. I mean that so far as my own knowledge goes, I know of no collusion between the parties.

Q. Haven't you so stated.

A. If I have I intended it to be understood that it was according to the practice of the Courts.

Q. Did you not at the time believe there was collusion between the parties.

Mr. Arnold. I do not know that that is proper to ask, what he believed, or rather what he guessed.

Mr. Ryan. The counsel for the defence asked the witness whether he knew of any collusion. Now, collusion is a matter which shows itself not to the observation, but to the judgment. I think as the question has been asked, I should have an opportunity to cross examine the witness as to his impression at that time. However, for the purpose of saving time I will come at it in another way.

Q. Do you not recollect this, that you were instructed by Mr. Wyman, not to make any opposition to testimony which was within the grounds of the petition, but if testimony should be given of a different character from the petition, to object to it.

A. My general recollection is that the petition set up as a ground of divorce, desertion, and perhaps cruel treatment, or something of that kind. He instructed me that if they confined themselves to desertion or to matters not calculated to make him odious or infamous, then he didn't care. But if they did, then he would not submit to it and would use exertion to oppose the divorce. He made no objection to matter in the petition.

Q. Was not that a circumstance inducing collusion.

A. I understood that she was willing to have the divorce, if she could without disgracing him.

Q. Well, didn't that look a little like collusion?

A. I think that is a matter of opinion.

Q. Is not that very knowledge, which you state that you had, collusion?

Mr. Arnold. I object to that.

The Witness. I mean to be understood by that, that I never had any conversation with Mrs. Wyman; never heard her say anything upon the subject, and have no recollection of hearing the Judge speak of it, except in Court.

Q. Do you know of any collusion on Wyman's part?

A. I know that I have heard him say he intended to apply for a divorce; that subsequently a petition was filed by Mrs. Wyman; that he expressed a good deal of indignation about it; that he maintained he was himself the injured party; but finally he agreed to let me go there and listen to the testimony, and if it was such as was not calculated to disgrace him, then he would let it go on and she might have the bill.

Q. Did he give you any instruction to resist on that testimony, or to resist the decree?

A. No, sir. I would state that I was a partner with Mr. Catlin, and all I had to do in the case, was, to go that once to hear the testimony. He had the conversation with my partner.

Q. Have you always recollected what county that decree was filed in?

A. No, sir, I do not know that I have. I do not know that my attention was called to it from that time to this, or till I was called on the other day about it, by Mr. Wyman. I said I thought it was Milwaukee; he said he thought it was Jefferson. I was not certain and cannot now be certain; some

order I think was taken in Jefferson, but my impression was, that the papers were taken in Milwaukee.

Q. Was that settlement in relation to alimony, before or after the decree?

A. I cannot say. I do not know what the state of the cause was, when that question came up. I do not recollect what term of Court it was. My impression is, that this decree was granted in vacation, and that the agreement about alimony was made the fall term after. I have no means of recalling the date of the decree.

Q. Was the alimony agreed upon, before or after taking the testimony?

A. I think I had a conversation about it before.

Q. Was the question of alimony the subject of negotiation between yourself and Mr. Collins, throughout that suit?

A. I think it was, sir. I think I had some conversation with Mr. Atwood about it too.

Mr. ARNOLD. Did you derive from Mr. Wyman, any knowledge, direct or indirect, that he had arranged or agreed with Mrs. Wyman, to let her get the divorce?

A. No, sir, I never learned that he had any conversation or communication with her upon the subject.

General PAINE was sworn and examined upon specification 3, article 4.

Q. Have you had quite an extensive practice for some years, in the Circuit Court of Milwaukee county?

A. I have had a practice in that county for some five years.

Q. I wish to ask you whether it has been the habit of the Judge, when causes have been submitted to him, to take the papers to his room and examine them, and draw or sign a decree, and file it with the clerk?

A. Do you mean cases of divorce?

Q. Yes, or chancery cases.

A. I have had a number of cases of divorce in Judge Hubbell's court. I do not recollect that he has ever decided any one case where it was litigated. After the testimony was taken, the proof of publication and evidence of notice had been brought into court, he has taken the proofs in many causes, in a number of instances to his room, and signed the decrees in his room, or at chambers. He has never signed any decrees for me in vacation. It was always in term time that he made any decrees in divorce cases for me.

Q. Has not the state of the business in that court been such, for several years, that the whole term in court has been occupied with jury trials, or with the discussion of motions, in the morning.

A. Yes sir, that has been the state of the business in that circuit court. The taking of the papers to his chambers, I know, was for the purpose of saving time in his court, that was necessary to be devoted to other business. I speak now only of my own cases.

Q. Has not, in fact, the chancery docket and divorce proceedings been disposed of, so far as they have been touched at all, pretty generally in that way.

A. I think that has been the disposition of the causes, from necessity, in order to occupy the court with jury trials. That has been the usual course in Milwaukee county. I suppose it is known to every member of the bar, there, that there has not been sufficient time for the Judge to dispose of a large portion of the business that was on the docket.

Q. And yet, has not the court set all the hours in the day that it was usual to hold court, and more too.

A. Yes sir, I think the court has consumed all the time that could be reasonably required in the business of the court.

Q. How is the fact, that for the accommodation of parties, he has heard causes at his own chambers, or at the offices of lawyers?

A. That has been a very frequent practice, with him, sir. I have had causes of my own argued at chambers, and at the offices of lawyers, for the purpose of forwarding the business.

Q. And then he has taken the papers and drawn such a decree or paper as he thought proper.

A. Usually in my cases, I have drawn a blank decree, and in a good many cases when the decree was signed, I have found alterations made by the Judge. I cannot say as to the business of other lawyers. I can only speak of my own cases.

GEORGE H. WALKER was sworn and examined upon Specification 1, of Article 2.

Q. Were you mayor of the city of Milwaukee, in the months of January, February and March, 1852.

A. I was, and I was mayor year before last. I recollect when Judge Hubbell was inducted into office. I was mayor of the city, then.

Q. What was the value of city orders in February of that year, before the adoption of the new charter?

A. Well, sir, there was no fixed value. They were disposed of according to the necessity of the individuals who had them. There were two kinds of orders —general orders, and special orders; special orders were given for special things, done on the property of the city. These orders were the least in value, and were selling at from 50 to 60 cents on the dollar, and I have known general orders to sell as low as 60 cents. The credit of the city was rather hard then, as far as the orders were concerned.

Q. Now, when the new charter took effect, and the city commenced funding its debt, was there not a sudden and rapid rise in the value of these orders?

A. There was.

Q. How much did they go up?

A. Well, I could not state, perhaps. It was a matter of speculation. I think the price of the orders did not go up to par, very rapidly. As soon as the orders were funded and drawn into bonds, the bonds sold readily. They were sold at par in New York.

Q. Before the adoption of the charter, what were city bonds worth?

A. Well, sir. We had two or three classes of bonds that were authorized by law. The city bonds usually brought par, or a little below. The bonds issued to the Milwaukee and Mississippi Railroad Company, were sold at par.

Q. Had the city paid its interest on its bonds for a year or two?

A. The city had neglected to pay the interest on some bonds—the fire loan bond, and the school fund bond.

Q. Do you not know the fact, that after Crocker was elected mayor, some parties raised private means to pay the interest of the city.

A. I did not know that. I was not one of the party. I know Crocker

censured me for permitting the interest of those things to remain unpaid. I could not help it, unless I raised the money myself.

Cross Examination.—Q. Was there not considerable money made in dealing in city orders at that time.

A. I presume there was in February 1852.

Q. Do you mean to say, that general and city orders ever sold as low as 60 cents.

A. The Charter was adopted in April. I could not say positively as to the date, but I should think at about that time they could have been purchased for 60 cents.

Q. Were not city orders usually of greater value in the spring, than at any other season.

A. They were generally considered best just before tax-paying time, for the reason that there was more demand for them then.

Q. Did you ever know an instance of a person who had purchased city orders from the parties to whom they had issued—did you ever know a person who had *purchased* them selling them as low as 60 cents at any time.

A. I could not state that I did.

Q. Was it not the fact that these orders were very much depreciated in the hands of poor persons, and were they not of considerable more value in the hands of those who bought them and could hold on to them.

A. There were always some who could buy orders, who were men of means and who calculated to speculate upon them.

Q. Well, in their hands had they not really a higher value, than the per. cent. at which poor men sold them.

A. Well, one man would hold his at 60 cents and another at 70 cents; I have bought general orders myself at 60 cents, to pay my taxes with.

Q. Were not general city orders receivable for all city taxes.

A. You must define what city tax, because we had a general city tax and a poor tax, and others, and general city orders were not receivable for all these purposes; that general city tax varies, and we had these various items to raise.

Q. Were not these distinct from the general city tax, and kept distinct in the books.

A. Yes, sir.

Q. Now what I ask of you, is whether city orders were not receivable for the whole.

A. Well, there was a tax called the general city tax, for which they were receivable.

Q. Was there not a tax levied annually to cover the general expenses of the City

A. Yes sir,

Q. Was there not a tax levied annually for other purposes.

A. Yes, sir.

Q. Were not the general city orders received in payment for the whole of that tax, and for the tax for general city purposes.

A. I believe they were.

Q. You say you bought orders to pay taxes. What tax did you pay them for.

A. Well I paid them for the taxes they were receivable for.

Q. Did you receive a list from the treasurer of the City of Milwaukee, and different columns with different taxes carried out, and with different figures.

A Yes, sir.

Q. Now was there not one of those columns headed, "general city tax."

A. Yes, sir.

Q. Now, was not that always payable in general city orders.

A. Yes, I think so.

Q. Don't you know it.

A. Yes, I think so.

Q. Were they not receivable for the fund for which they were issued.

A. Yes, I think so.

(Mr, Ryan here read one of the orders, and asked:) Was not that upon the face of all these city orders.

A. Let me look at it a moment. Yes, that is the general form. That I believe is the general order. But this order is filled out usually for what it is intended. There is a blank at the bottom for that purpose—for services on the bridge, or on the street, or on the general city account, chargeable also for work done in the 1st, 2nd, 3d, or 4th, Wards, then they become Ward orders.

Q. At the time you speak of, did not every Ward issue its own orders.

A. We have nothing to do with Ward orders.

Mr. ARNOLD. Was not the City at that time largely in debt, and was there not a larger amount of orders out than could be absorbed in paying taxes.

A. The indebtedness was nearly $140,000.

Q. I recollect hearing you state that in a speech once; was it not a fact, that you could hire work done for 60 cents in cash, that you would have to pay a dollar for in City orders.

A. I hired some work done myself for which I paid 18 cents a yard, cash, when the City was getting the same work done, and paying 30 cents a yard in orders.

Mr. RYAN. What is the debt of the City of Milwaukee now.

A. If it is not very material to this case, I do not care about stating. The orders are at par now.

Q. I think we must have you state the amount of the debt.

A. Well, I suppose it is about $140,000; the debt has not increased much. This was a funding debt. The debt for the last year has been well paid up, regularly, every debt that was due.

Q. But has not the debt increased.

A. These liabilities for Railroad purposes perhaps have increased it. The City has voted to increase its debt to $600,000.

Q. Do you mean to include the Railroad orders then, in that $140,000?

A. No, sir, that is a debt in another shape. The city debt, including every thing, I think is not far from $450,000 now, and at that time too.

Mr. ARNOLD. Why were these orders, when outstanding and floating about, so much below par; but when converted into bonds they rose up at par?

A. It was in a different shape. It was in a shape that a man would buy to hold on to; that a man would take as an investment. I think they drew at the last payment of interest, 8 per cent.

WM. S. HAWKINS, was sworn and examined, on Specification 4, Article 7.

Witness. I reside in Waukesha county, and am a lawyer by profession.

Q. Do you recollect a certain suit, pending in Waukesha county, of Barker against Pratt?

A. I do.

Q. What term was judgment rendered in that case?

A. I think it was rendered at the March term of 1852, though I would not be positive about the time.

Q. That was an action on a judgment, rendered in Vermont, was it not?

A. Yes, sir.

Q. Do you recollect the circumstance, that we resisted the judgment on the ground of apparent fraud or mistake, on the face of the record?

A. I do, sir.

Q. Do you recollect what the Judge said at the time of rendering that judgment?

A. There appeared to be a deficiency in the transcript, filed by Mr. Downer. On the part of the defence, there had been another transcript and the transcripts did not agree exactly. The defendant's was much fuller, so that it created somewhat of a doubt on the face of the two papers. I think it was remarked by Judge Hubbell, that there was an apparent doubt, whether the matter was correct upon the face of it, but not a sufficient doubt to warrant a rejection of the paper from the evidence. He remarked that he should enter a judgment upon the matter, for the purpose of securing the claim; but there was an application made I think at that time, for a satisfaction of judgment.

Q. Who were the counsel in that case?

A. I was counsel for Pratt, and Downer was counsel for Barker.

Q. Was not that what the Judge said: "that he wouldrender the judgment secure by having the judgment a lien on the defendant's estate."

A. Yes, sir.

Q. Why did he grant the judgmnt without satisfaction?

A. Well, it was represented to the Judge there were proceedings in progress to have a new trial in Vermont, and the attorney had been employed there. And the petition had been got up for the purpose of having a new trial, and it would probably be tried and decided there in Vermont.

Q. Does it not appear on an exemplification, that a judgment was rendered in Vermont, and a settlement of book account, under a peculiar statute in which auditors were appointed and made their report, and judgment was entered thereupon?

A. Yes, sir.

Q. Didn't it appear that Pratt was plaintiff in the suit in Vermont, and left that State, and after he left, his attorney withdrew his appearance; and that the defendant came in, and pro luced, not only his own account before the auditors, but also Pratt's account, and thereupon the auditors reported in favor of Pratt? A. Yes, sir.

Q. Did not that statute in Vermont, provide that an appeal could be taken, in the County Court? A. Yes, sir.

Q. It was that appeal that he stated at Waukesha, that he had taken?

A. Yes, sir. Judge Hubbell said that he should permit a judgment in order to secure Mr. Barker, and should stay execution till the matter could be tried?

Q. Now at the next term, was there a motion made to cancel that order, and have that execution issued.

A. Mr. Downer made a motion at the next term, that the stay should be vacated and the execution carried out; but we introduced papers showing that proceeding had been commenced then, and the Judge refused to vacate the stay.

Q. Do you know the fact that the suit has been, since that time, commenced in the United States' Court, upon that judgment.

A. I know that a suit has been commenced there. I took pains to go and examine the record at the request of Mr. Pratt, to see the state it was in. It was, however, in vacation and not in Court.

Cross Examination.—Q. Was the judgment rendered, and the execution stayed at one and the same time?

A. I think it was the same term.

Q. I asked you if it was done at the same time—whether it was done immediately upon that action, and forthwith?

A. I cannot say.

Q. Was it done the same day?

A. I know that Mr. Downer applied for an execution, at the same time, and urged that it might be issued, and I opposed it; and I know that the Court erfused to issue the execution, until the examination could be had in Vermont.

Q. Will you answer my question, whether the order to stay execution was made at one and the same time, with granting the judgment?

A. My impression is, that it was the same day.

Q. Was Mr. Downer present when the order to stay the execution was entered.

A. He was.

Q. You are sure of that?

A. I am very confident he was, because I recollect the remarks that he made, and his objection to the order being made to stay the execution.

Q. At the time the order was made, to stay execution, what evidence was offered in Court, of proceeding being taken in Vermont, to attack the judgment there.

A. Well, I think there was a statement by the counsel, about proceedings being commenced, or having been commenced. I think there were some letters produced then from an attorney in Vermont, I do not recollect his name, stating that he had been employed for the purpose of commencing the operations, and that there had been a petition drawn.

Q. Did Mr. Downer admit those facts.

A. I do not think he admitted them.

Q. Did he deny them.

A. I do not think he denied them.

Q. Did he make any comment upon them?

A. Not that I recollect of. He seemed to find fault with the staying of the execution.

Mr. Arnold. Was it not in this way, that the very time of rendering the judgment, the Judge expressed great doubt about it; and then upon the statement of the counsel in Vermont he said he would allow a stay to be issued, with a view to ascertain the proceeding in Vermont.

A. Yes, sir.

William S. Hascall was sworn and examined to the same Article and Specification.

Q. Were you clerk of the Waukesha county Circuit Court?

A. I was till January last, for the three or four years previous.

Q. Do you recollect a suit there of Barker against Pratt?

A. I do, sir. I recollect the action and of judgment being given.

Q. Do you recollect what transpired there—what was said by the Judge?

A. Well, there had been some controversy between Mr. Downer, yourself, and Mr. Hawkins. There had been two transcripts produced, and two statements made. The Judge told Mr. Downer that he thought that there was some question, whether judgment ought to be entered upon the proofs, but upon reflection he would give him a judgment, in order to give a lien upon Pratt's real estate; but he should stay execution, until the matter had been closed up. The defendant was taking steps then, according to his statement, to have the judgment reconsidered or reviewed.

Q. Do you recollect that he said anything about giving that defendent in Vermont reasonable time to have the judgement reviewed?

A. Yes sir. From the face of the transcripts and mutual statements he was satisfied there was something or other in it that ought to be examined into.—The transcript that Downer introduced conflicted with the transcript that was introduced by the defendant, though both came from the same officer. The defendant's transcript seemed to be fuller than that introduced by the plaintiff. There was some defect upon the face of that transcript introduced by the plaintiff. At the subsequent term of the court Downer applied for an order vacating the stay of proceedings, and at that time there were affidavits introduced by the defendant showing that he had been asking diligence to have the matter reviewed, and the judge said he was satisfied there had been diligence used by the defendant, and he should over-rule the motion and it was over-ruled.—That was in the November term 1852. There were affidavits introduced showing that the appeal had been taken and showing that they had been doing what they could. He said there had been considerable trouble in getting the letters back and forth, but that Pratt had done all he could.

Q. What did the Judge say about being ready at the next term?

A. I do not recollect. My attention was more particularly attracted to Downer at that time. Q. Why?

A. Well, he was a little excited.

Q. Do you know that he went and brought a suit in the United States Court upon that judgment.

A. I think he did.

Cross Examination—Q. Was there any more conflict between the transcripts than that one was more fully detailed than the other.

A. My recollection is, that upon the face of the transcripts, the dates of accounts were different. That might have been mere clerical errors.

Q. Well, was there any conflict except that one was more fuller than the other.

A. Only in that point.

Q. Was the order staying execution made at the same time the Judge said if he gave judgment he should stay execution.

A. There was some remark made by Downer. He left the bill of costs, and went home, but that was subsequently to entering the judgment. I remember telling Downer that the order had been entered. I think Downer came

back after the Court rose, but it was after the order staying proceedings was given. The order was entered by the Court, and Downer may have come back there, that day or the next.

Q. Was Downer present at the time the order to stay was entered.

A. I could not say.

Q. But is it not your recollection that he was not present.

A. No sir, I could not say that; the most I recollect about the statements concerning the proceedings in Vermont, was at the time Downer made the motion to vacate the order staying execution.

Q. Do you recollect any statements being made before the order staying the execution was entered, of proceedings being taken in Vermont.

A. I believe there was.

Mr. Arnold. Did not the Judge say to Mr. Downer: "You can have your choice—I will give you your judgment, or the matter may go over to next term. If I give you a judgment that will be a lien upon the premises and will secure you; but I shall stay execution in order to have it reviewed."

A. That is the substance of what he said.

Q. Did the transcript of the defendant contain the entire proceeding; and the dates of the one which was presented by the defendant showed clearly a mistake, or else fraud.

A. Yes sir, that was the question between yourself and Mr. Downer. Both transcripts were introduced as evidence.

N. J. Emmons was sworn and examined upon the 1st Article.

Q. Where do you reside.

A. I reside in Milwaukee, and am an Attorney at Law.

Q. Do you recollect a suit pending in the Circuit Court of Milwaukee county, in which Theodore Perry was plaintiff, and Cicero Comstock, Chase, and Sanderson were defendants. A. I do, sir.

Q. Were you employed as counsel in that case?

A. I was employed as counsel for the plaintiff.

Q. Did you attend and take part in that case before the Judge?

A. I did. It was an action of assumpsit commenced by attachment. The attachment was Comstocks, issued under the statutes authorizing attachments, against the operations of the defendants; and by ordinary summons against Chase and Sanderson. The suit was brought to recover about $21,000 for cash advanced by Theodore Perry, against the firm of William Sanderson and Co. It was for advancement of cash from time to time, and for drafts either on Perry or taken up by Perry. Several were drawn directly on Theodore Perry.

Q. Were the transactions as disclosed by vouchers very large, and was this $21,000 a balance only?

A. This was a balance. The dealing had been twice or three times that.—Indeed I think it was over $200,000.

Q. What was the issue before the Court?

A. It was an issue made up by the traverse of the affidavit. An issue made up under the Statute of 1851, allowing the defendant to make a true case of the facts in the affidavit. The Comstocks came in, denied the truth of the facts asserted in the affidavit and the issue was tried by the Court.

Q. Can you state in general terms what became of the material points and issues before the Court.

Mr. RYAN. The issue appears upon the record, Mr. Arnold.

Mr. ARNOLD. Well, I want to show what appeared, as matter of fact of investigation before the Court.

A. Well, it would be necessary to state that there was an allegation of fraud, that they had made a fraudulent disposition of their property, with intent to defraud their creditors, and I believe the affidavit then went on to state particularly, what the facts and circumstances, upon which that belief was founded; and they were generally, that Wm. Sanderson, had been a member of the firm which composed the four defendants; that he had sold his interest some time prior to the commencement of the suit, to the Comstock's, and shortly after that, the Comstock's had made a general assignment of their property, including real and personal estate, making preferences of creditors and leaving the debt due to Theodore Perry & Co., in the unpreferred class, and the fact particularly was mentioned, that cotemporaneous with the assignment ——

Mr. RYAN. What are you having stated now?

Mr. ARNOLD. I was asking the witness about these matters in preference to reading the record; but I will read the record, I will read to the Court the affidavit on which the suit was commenced. (Mr. Arnold read the affidavit.) To that affidavit then was a traverse which becomes material in the investigation of this case. (Mr. Arnold read the traverse.)

Q. Now, Mr. Emmons, if you can from your memory give to the Court information in regard to the proof that was submitted on the hearing of that traverse.

Mr. RYAN. And remember to state the proof if you please, and not your conclusions upon it.

A. Well sir, it was proved that the conveyances as described in that affidavit were made at the time alleged by the affidavit. They conveyed a large amount of city property, some in Washington county, and some in Sheboygan county, and then a large number of unimproved City lots. That was proven. The consideration expressed for the conveyance to George Comstock, was $10,000, and the ground taken by the plaintiff, to maintain the evidence of fraud was that this property had been conveyed for a sum far short of its actual value, at the time it was conveyed.

Q. Was there proof, and a good deal of it, submitted on that point.

A. Yes, sir, there was. A number of witnesses were examined on both sides, as to the value of that property. I think the basis of the witnesses summed up put it at $10,000,—several witnesses put it lower than that, though their basis was what it would bring at a forced sale.

Q. Did any of them bring it down to the consideration for which they were conveyed.

A. Well, sir, I made an estimate at the time, for my own use, and I made it over-run $10,000. We called three men who testified exactly alike—Mr. Hoover, Mr. Lapham and somebody else. I think they made a schedule and swore from that. Messrs. Downer, Richards, Byron Kilbourn, Dan'l Wells, Augustus Childs, testified as to the city property. Mr. Powers, of Port Washington was called, as to some property in Washington county. Those gentlemen were called on their part. We took another ground, that irrespective of that question, the deeds of conveyance and the assignment having been executed cotemporaneously and to the same persons, the transaction had been fraudulent, and

we relied upon that as showing a fraudulent preference. There was one conveyance made to Theodore Comstock, for a consideration expressed of $2,600, which was entirely unexplained. That we relied upon as evidence of fraud.

Q. Was it not contended, that that demonstrated fraud, aside from other proof.

A. Yes sir, we relied upon that very strongly. They did not show whether it was conveyed in payment of debt, or whether it was for cash. We asked them to explain—if it was conveyed in payment of debt, what debt; and if for cash, what had become of the cash. There was another ground urged —that Sanderson had conveyed his interest in the firm, to the Comstock's and that shortly prior to the general assignment they had diverted, or appropriated the assets of Sanderson & Co., to pay individual debts, rather than the debts of the partnership, that were to be provided for under the assignment.

Q. We contended, did we not, farther that the property was worth a great deal more than the debt.

A. That was a point relied upon. We took pains to prove the character of the property and that it was constantly appreciating in value, and we claimed that it was evidence of fraud, its having been consigned to a brother; and that the creditors should have had the assignment and benefit of any rise in value, rather than conveying it absolutely to any one creditor.

Q Was it not in proof that the $37,000 set-off to preferred creditors, were liabilities for which the family, the father and brothers, were liable.

A. Yes, sir.

Q. Then did we not make this point, that by the assignment which was also to the brother, and to secure the debts for which the father was liable, the assets and property were swept away by the family, either father or brothers.

A. Yes, sir, that fact was claimed.

Q. Was there not a farther point made to which we attached importance—that although the assignment was not recorded at the date of these assignments, subsequently they went and recorded a part of it and refused to produce the assignment.

A. Yes, sir, that was a point—that the schedules were not recorded. I forgot whether they refused to produce it or not.

Q. Did we not try, in every way we could to get at that assignment, until finally the Judge remarked that it was a strong circumstance against them, their unwillingness to produce it, and then they produced it.

A. Yes, sir.

Q. We could not, without production of the assignment, prove that it had not all been recorded.

A. I think no question arose about that till just before the case closed. I do now remember that remark.

Q. Was not that the way, they took advantage of legal technicalities, to coerce us to produce him as a witness.

A. Yes sir, that was what we thought. I do not know that they avowed that as a motive.

Q. Was not there another point, that the Comstock's had just been down to Ohio and made arrangements with their father to make this assignment, and that then they went to New York, and purchased a large amount of goods, representing that they were responsible and doing as good business as ever.

A. Yes, sir. It was claimed by us, and claimed to be deducible from the proof that Cicero Comstock had estimated and represented, this real estate, a short time before, as worth much more than he had conveyed it for. That was denied; but we proved that he had represented his real estate worth so much; and it left the balance of the estate worth far more than $10,000. It was also proven that he represented in New York, that he was doing a prosperous business, as good as he had ever been doing; and that he was worth $30,000, over and above debt.

Q. Was it not proved that it was in the September preceding the November, when the assignment was made, that these representations were made in New York.

A. I think it appeared that he was in New York in August.

Q. I will ask you one more question, I do not know but the other side will object to it. Whether, in looking through the proof of that cause and the points of law made in it, you ever tried any case when you thought your case as strongly made out.

Mr. RYAN. We object to that question, Mr. President. We know that lawyers usually think their cases very strong. If this question is to be asked of this witness, why, we will have to call the counsel upon the other side of that case to testify the other way.

Mr. ARNOLD. Well, I withdraw the question. Mr. Emmons, I will ask you to look at that book and say whose hand-writing it is in.

A. That is Judge Hubbell's hand writing. This is his book of minutes which he is in the habit of keeping upon the trials of causes.

Q. Is it not his habit to keep a full and very complete record of the testimony and all the proceedings in the cases before him.

A. Yes sir, I think he does very full, indeed.

Q. How long a time did that case consume?

A. We were five or six days in the trial of it.

Q. Do you recollect when the decision was given? A. I do.

Q. How long was it after the case was submitted to him.

A. I think it was two or three weeks.

Q. Do you recollect anything of the course of business in his Court, from the time it was submitted—and whether the Court was occupied with jury trials—and whether they were important ones?

A. My recollection is very general. I know it was a very busy term, and I know that a good deal of fault was found by the bar, for letting the Court be occupied by the case, when jury trials were waiting.

Mr. KNOWLTON. Do you recollect noticing Judge Hubbell's keeping minutes of testimony during that trial.

A. Yes, sir, I know that he did, he was constantly at work during the trial. I know that, for we had frequent occasion to refer to Judge Hubbell's minutes.

Cross Examination.—Q. You have stated the proofs and positions of the *plaintiff* on that trial. Will you be good enough now to state the proofs and positions of the defendant on that trial.

A. I have stated already the principal proof given by the defendant, as to the value of that property; and they offered a receipt and some assignments of debts against Cicero and Leander Comstock, to George Comstock, and then a receipt from his partner; at any rate it was some written evidence of transfer

to George T. Comstock, to the amount of some $9000, that was offered, but upon objection it was withdrawn.

Q. Will you state their positions?

A. Well, they generally took ground against us.

Q. Are you able to state their specific positions. Did they submit and say there ought to be a judgment against them?

A. Certainly not. They denied our first point, as to the character of the transaction. They denied that the assignment and conveyances were cotemporaneous, and although they might be regarded as cotemporaneous in fact, they could not be regaded as one instrument. The ground they took as to this value of the property, was one chiefly of fact. They denied in particular, that if we had proven the property to be worth more than $10,000, it would be any proof of fraud. I think they did not contend against that, but took the ground that the evidence did not warrant the conclusion. They called five or six witnesses, to prove that it was not worth so much, and we called two or three to prove that it was worth more than $10,000.

Q. Who argued it on their part?

A. Mr. Randall and J. S. Brown. Mr. Brown, however, came into the case very late, and had evidently had no preparation for his argument. Mr. Randall had been retained from the beginning.

Q. Were any of these positions of the plaintiff's suggested to you during the trial of that cause by Judge Hubbell? A. No, sir.

Q. You stated that a position was taken there that Sanderson having transferred his interest to the Comstocks, it was a diversion of the property for the Comstocks to assign or sell that property to pay debts, which were not the debts of William Sanderson & Co.

Q. Who suggested to you that position.

A. That I cannot say.

Q. Who suggested to you to give proof tending to substantiate that position?

A. I cannot tell whether it originally proceeded from me, or from Mr. Arnold.

Adjourned to 3 P. M.

AFTERNOON SESSION.

Mr. Emmons resumed the stand.

Q. Before the adjournment I had asked you whether Judge Hubbell suggested to you during the trial of that cause, the position relative to the diversion of the property from the payment of the debts in which Sanderson was interested.

A. He spoke to me of that fact. He did not suggest the point.

Q. Well, state what he said, and when, and where and how.

A. It was during the trial and during the recess of course. We were walking down together from the Court room and he asked me the question why we didn't prove the fact of the transfer from Sanderson to the Comstocks and the property which had been transfered.

Q. What did you answer him.

A. Indeed I don't know.

Q. Well, state all that you remember of that conversation.

A. Well, the conversation was a short one. He asked me if we did not intend to prove that. I presume I told him that we did intend to prove it if we could; and he remarked to me in substance like this: that we had better prove the facts and the amount of property which had been transfered to the Comstocks.

Q. Did you tell him whether you yourself had faith in that point.

A. I do not think I did.

Q. Did he say anything to you about the weight or importance of that point?

A. Well, do not know how much importance he attached to it; or that he made any comparison between it and any other point. He regarded it as essential to prove that. That may not have been his language and I will state that perhaps I may have drawn that inference from something he did say.

Q. Had you given any evidence at that time on that point on the part of the plaintiff?

A. Well, I do not know, sir. It would be a mere impression if I should state it. My impression is that we had not, and that perhaps was the reason of his speaking of it.

Q. That was doing the progress of the trial?

A. Yes sir, it was while the trial was going on.

Q. About the time of the commncement of that suit of Perry against Comstock and others, was there any difference of opinion among the counsel for the plaintiff in regard to the manner in which the suit should be commenced; part of them maintaining that it should be by summons and part of them by attachment?

Mr. ARNOLD. What has that to do with cross examination?

Mr. RYAN. I think it is legitimate.

Mr. ARNOLD. I object to it, and it is objected to simply for the reason that it is irrelavant on cross examination. I know of no question put or answer given that leads to that. The suit was commenced by me and the whole proceedings were commenced before Mr. Emmons came in. I may be mistaken, but I doubt whether Mr. Emmons was familiar with the manner in which the suit was commenced.

Mr. RYAN, made a brief remark here that was not heard by the reporter.—Whereupon the objection by Mr. Arnold was withdrawn.

A. Well, sir, the facts are just these—the manner of commencing the suit was discussed between Mr. Arnold and myself. He took ground on one side and I on the other; but at the time it was commenced we agreed. It was a discussion of the property of the one form or the other and that is the conclusion we came to.

Q. Who retained you on that suit?

A. William Sanderson. We had then concluded in what form to commence the suit. Mr. Arnold came to my office and we talked the statute over, and came to the conclusion that that was the proper form.

Q. Was it shortly after Mr. Sanderson came to Madison that that suit was commenced?

A. I know only by hear say.

Q. Do you know for what purpose Mr. Sanderson came to Madison shortly after the commencement of this suit?

Mr. KNOWLTON. Is that to impeach your witness or to sustain him?

Mr. RYAN. To sustain him, sir.

Mr. KNOWLTON. Is it cumulative of his testimony?

Mr. RYAN. No, sir.

Mr. KNOWLTON. Then it won't sustain him.

Mr. RYAN. It might sustain him and not be cumulative.

Mr. KNOWLTON. It would be a very singular species of evidence then, I think.

Mr. ARNOLD. The question is objected to, and for the same reason that I gave for the objection which I just now withdrew. I now renew the objection, which, I think, is well taken—it is not cross examination which was drawn out by me. Sanderson was their witness and yet the whole examination was, in fact a cross examination. Well, now they asked Sanderson about his going to Madison, and what transpired, and what he said to his lawyers when he went back, and all that. If they seek to contradict him it is wrong; and if they seek to draw out more testimony, it is because they endeavor to make their own witnesses appear in the light of desiring to suppress the truth.

Mr. RYAN. The Managers rested their evidence upon the first article upon the testimony of Sanderson alone. The gentleman makes the remark that our examination of Sanderson was entirely a cross examination. I admit that it partook somewhat of the nature of a cross examination; and I assert the rule of law, that when a witness shows the reluctance that that witness showed it is right to assume the nature of cross examination.

Mr. ARNOLD. Yes, but I assume one thing and you another.

Mr. RYAN. Now, Mr. President, having rested our testimony on that one witness, they call a witness upon the stand for a purpose not very clear to me —whether to rebut our case or to explain it. I do not very well perceive how it helps them.

Mr. ARNOLD. It is to show that the decision was entirely proper.

Mr. RYAN. Well, I am cross examining the witness to show that it is improper; and if that is not cross examination, then I do not know what is. I utterly deny that you are confined to the same trail of the direct examination. You may ask the witness every question which is calculated to give a defferent coloring to the testimony; and if the purpose for which this witness was called, to show that the judgment was proper, if direct testimony upon that proposition is competently given, it is perfectly competent for me to ask the witness every question that tends to show that the judgment was not properly given; and if I can show by this witness any thing which proves the other way, I have a right to ask that question by way of cross examination.

Mr. ARNOLD. I did not intend to say one word in reply. I thought the objection so well taken, that it would be conceded without argument. I cannot assent to the gentleman's proposition. I stated, and state now, that the object of introducing this testimony is, to satisfy this Court, that there was no occasion for any bribery, and that the cause itself would not have warranted any judge in the world, in giving a different judgment. I suppose the gentleman who is counsel on the other side, maintains that the respondent is guilty of corrupt conduct in office, and crimes and misdemeanors; and I might retort upon him and say, I have a right to ask his witness any question that would go to rebut that general accusation. That would be a fair answer, yet, I will not assume that position, if I should, however, I could, under cover of cross examination

make every witness of the prosecution, in fact my own witness, and could get at facts, which by the rules of evidence, I ought not to get at. A party, when he introduces a witness, commits him to that side of the suit, but when he seeks to bring out new facts on cross examination, then he makes him his own. I do not wish to throw anything in the way of what the counsel has said or done; but when he seeks to draw out, in the cross examination of this witness, matters to which Judge Hubbell was not a party, matters pertaining to an out doors report, of a conversation between Sanderson and Judge Hubbell, which may be true or false, and of Sanderson's statement in relation to that conversation, I must object to the question.

Mr. KNOWLTON. This question, it occurs to me, is not exactly as is supposed by the counsel for the prosecution; I enquire of him, whether the object of that testimony is to contradict his witness, or sustain him. He says to sustain him. What is the rule of law on that subject? The rule in question is, that he is not entitled to impeach his own witness or contradict him; although he may prove facts different from what the witness has sworn. He is not entitled to introduce cumulative evidence for the purpose of impeaching the credit of a witness he has called. We have not interrogated this witness, upon any matter of which we interrogated Sanderson. Have we enquired of any matters to which Sanderson testified? Certainly not. Then, how is he entitled to ask this witness to bolster up Sanderson. As we have not attempted to impeach Sanderson, his testimony stands good. He is not entitled now, to go on and prove a case that he maintains is already sufficiently proved. But what have we done? Why, we have been endeavoring to prove a state of facts, from which the Court could draw a legal inference. Of what? Why simply what was done in Court, and not what was done out of Court, at another time, when Judge Hubbell was not present. Now, what relation has one of those things with the other? None earthly, and the gentleman knows it.

The question reduced to writing, as follows, was submitted to the Court:

"Do you know for what purpose Sanderson came to Madison, shortly after the commencement of the suit, and if yes, state what purpose."

To which Mr. Arnold, of counsel for respondent, objected.

The question was rejected; all the Senators voting in the negative.

Q. Were you present at the decision of the case of Sanderson against Comstock?

A. Yes, sir.

Q. Did you hear the opinion delivered?

A. I did.

Q. In the decision of that case, was the point, that Sanderson had conveyed his interests to the Comstocks, they assuming to pay the debts, and Comstock having diverted the property to other purposes, than paying the debts of the company—was that stated as one of the points of the decision, and a ground of sustaining the attachment?

A. I think it was, but I am not certain. Judge Hubbell's opinion was delivered orally, and it was quite lengthy; I am sure he sustained two or three other points in that case. He commented upon that point, and my impression is, that he sustained it.

Q. Do you recollect that at the end of that opinion, in answer to some remark made by Mr. Randall to the Court, his denouncing in substance, this

proposition—that a debtor, in failing circumstances, might prefer one creditor to another, might also pay the debt of one creditor in preference to others; but he could only do that in money, or in property of a fixed market value, and not in real estate, which had not a fixed market value.

A. Well, I remember that, and have heard the matter spoken of since. I recollect Mr. Randall's putting the question to the Judge, like this—and believe it was after Judge Hubbell had got through his opinion—"why, your honor, suppose he had paid the debt in cash?" Then Judge Hubbell replied in substance like this: "Then there could have been no room for fraud, or if he had paid in wheat, it would be the same; but if he paid in real estate it would be different." He then went on to make a hypothesis, and said he could not prefer a creditor, and pay him in real estate. Mr. Randall himself disagreed about that. I understood Judge Hubbell's answer simply to reiterate what he had said before in his opinion; and he decided that it was evidence of fraud for a party to transfer his property under those circumstances; and then Mr. Randall asked him the question.

Q. You have been asked in regard to Judge Hubbell's book of minutes and its accuracy. Have you ever attempted to settle bills of exceptions with the Judge on that book of minutes.

A. Yes, sir.

Q. Do you recollect a bill of exception in the case of Dowe against yourself.

A. Yes, sir.

Q. Will you state to the Court whether you had not in that suit great difficulty in getting a fair bill of exceptions.

Mr. Arnold. That is objected to. I do not object to many of these questions at the instance of the respondent here; but I do not like to have this trial go forth to the world reported as it will be with this kind of questions coming in and I setting still and not objecting to them. I do not like it on my own personal account, on account of my own reputation as a lawyer. I have no objection to the gentleman's asking the witness in relation to what I have asked him, asking him whether the book was kept correctly or accurately or anything of that kind; but to ask him with reference to another case, whether he had difficulty about the Judge's notes in another case, is rather far fetched.

Mr. Ryan. The witness was asked as to the accuracy of that book of minutes.

Mr. Arnold. No, sir. I asked him as to the hand writing in that book, and if the Judge kept full minutes.

Mr. Ryan. I believe it was as you stated. The witness was asked whether the Judge kept full minutes, though for what purpose it was asked I do not know; I presume it was asked for the purpose of showing that the Judge is in the the habit of keeping full minutes. I apprehend full minutes are correct minutes and I propose to show by this witness instances to the contrary.

Mr. Arnold. I shall insist upon the objection upon my own account; and I am responsible in this. I had a large hand in making up that bill of exceptions; and the difficulty arose from the Judge not having his charge upon paper, and a difficulty that arose from some trouble in making up a bill of exceptions on account of not having his charge upon paper is all too far fetched, and not relevant here.

The question was submitted as follows:

"Had you great difficulty in the case of Dowe against yourself, in getting a fair bill of exceptions signed by the Judge, from his minutes,"

And rejected, noes 15, ayes 9.

Mr. ARNOLD. Was not one of the strong points made by the complainant that this sale of property, made to George Comstock, and Theodore Comstock, made under failing, and insolvent circumstances, whether it was a circumstance of fraud, for the reason that it took away from the sale, the competition of the public.

A. The whole burthen of my argument was upon that point. That was the point distinctly made by me.

Q. Have you examined the minutes of Judge Hubbell, in this case of Perry against Comstock.

A. Yes, sir.

Q. Is it a full report, and correct, as far as you know, of the testimony taken in the case, and the points made by counsel.

A. I have recently examined it very slightly, I have never read it fully, I have looked at the names of witnesses. I read it at the time the bill of exceptions was made up in the case. It is very full of the testimony in the case. The opinions are not given.

Mr. ARNOLD. I offer now to have Mr. Emmons take the book, and read the points taken on both sides, and ask him if the points are correctly stated.

Mr. RYAN. I owe you an objection, and I may as well pay it now. I suppose the witness can refer to a memorandum, made by himself, and refresh his memory, but I suppose he cannot refer to a memorandum made by anybody else, and then refresh his memory, I suppose that is a well settled point of law.

Mr. ARNOLD. Here are some four pages of points, made by counsel. The witness might look at that, and say whether those points are stated correctly.

Mr. RYAN. Well, I object.

Mr. ARNOLD. Well, I will not press it. Mr. Emmons, has there been a bill in chancery, filed by you, as complainant and solicitor, in behalf of Erastus Corning & Co., of Albany, against Jonathan Taylor, Levi Hubbell and Levi Blossom, the complainants being judgment creditors of Taylor, alleging that the transfer of that judgment from Taylor to Blossom, or to Henry P. Hubbell, was fraudulent, and seeking to compel Hubbell or Blossom, to pay over the amount of to the judgment creditors.

Mr. RYAN. I object to that. I do not see the bearing.

Mr. ARNOLD. I seek to follow it up by showing, if I can, that it has been done by Taylor. It is to impeach his testimony so far as he undertook to deny any indebtedness to Judge Hubbell, at the time of that assignment.

Mr. RYAN. I do not see how you make it out. I do not see how, by any possibility it can be relevant.

Mr. ARNOLD. I will state the object of the offer, if the counsel does not sufficiently perceive it. I have stated in my question, sufficient to apprise the counsel, as well as the Court, of the drift of the question. It is to ascertain if certain judgment creditors of Taylor, have filed a bill against him, alleging that the assignment of that Taylor judgment, was fraudulent, and seeking to compel them to pay the amount of it to these complainant creditors. In order to sustain that bill, I suppose it was necessary to prove that there was

fraud, that is, that there was no indebtedness to Judge Hubbell, at the time of that transfer. It goes so far to impeach the testimony that Taylor gave upon that subject.

Mr. RYAN. I cannot see by any possible stretching of conclusions, how any possible judgment of Taylor's could affect Taylor's testimony. Taylor states that in the first place he made an assignment of that judgment which was never acted upon, to Henry P. Hubbell, upon the mere suggestion of Judge Hubbell. He tells you that subsequently he sold it to Judge Hubbell, and a discount was made, and also an allowance to pay an indebtedness which Judge Hubbell claimed Taylor owed him, and Taylor allowed it. Now, I cannot see how any effort of the creditors of Taylor to set aside either one of those assignments as being fraudulent against creditors can be an impeachment of Taylor's testimony here, I do not see it.

Judge HUBBELL. It is so far to show an interest in him to testify here against me.

Mr. RYAN. His testimony here is directly against Corning & Co., for he testifies to receiving a valuable consideration for the judgment.

Mr. ARNOLD. Well, he states that he did it to keep it out of the way of his creditors.

Mr. RYAN. I do not see how it was the interest of Corning & Co., to assail that assignment which was never acted upon if the assignment to Blossom is a good one. I do not see how they are to benefit themselves while the assignment to Blossom holds good.

Judge HUBBELL. We can see well enough how Taylor thinks he is going to do it.

Mr. KNOWLTON. If they succeed in making Blossom pay, is it not going directly for the benefit of Mr. Taylor?

Mr. RYAN. I do not care at all about that. What Mr. Knowlton suggests would be a mighty good objection to Taylor's being a witness in this cause.—Legal interest is out of the question in this matter. Any interest of Corning is out of the question, because Taylor's testimony is against the interest of Corning & Co.

Mr. ARNOLD. Well, we will withdraw the question. Mr. Emmons, I ask you the following question, because Mr. Taylor is not here, and he wished me to ask you about it. He was questioned here in regard to those papers and letters from Judge Hubbell, and how they got before the committee. He had the idea that he gave them to you.

A. I delivered them to Jonathan Taylor, and I understand that he produced them before the committee.

Senator WAKELY. Did it appear on trial that the conveyance of real estate to George Comstock and others was or was not made in their presence and with their knowledge.

Mr. RYAN. In the presence of the grantees, I presume the Honorable Senator means.

Senator WAKELY. Yes, sir.

A. It appeared that the conveyance, and, I think, the assignment were made while they were absent, and before their arrival in Wisconsin. I think Mr. Whitehead testified to that. I am quite certain it was so with reference to Theodore Comstock.

Mr. RYAN. I wish you would state the whole testimony, upon that point. I do not recollect it?

A. Well, sir, it was this. We showed by records, the conveyance, and at a subsequent stage of the proceedings, by Mr. Whitehead, who was clerk for the Comstocks, that these conveyances were made out before the arrival of the Comstocks in the city. I have forgotten what testimony was given in evidence upon the subject of the assignment. There was an explanation given, or attempted to be given, of that circumstance. My impression, that with regard to the deed, there was no explanation given, but still that may not be literally true, because it may be, that we took strong grounds, and had an impression that they did not explain. There was some evidence given to explain, why those papers were recorded, before they came to Wisconsin. Whether it extended to the deeds or not, I do not recollect.

Q. Was there any testimony to show that Theodore Comstock was there at all?

A. Not that I remember. I think, however, the explanation is this, on reflection. There was some explanation given, and now, I am quite confident, it was as to the assignment. There was a man named Finch who testified, that some arrangement had been made by Mr. Finch, to show some assent on the part of the assignees, to the making of the assignment; but my impression is, that he did not give any testimony, to explain the making of these deeds, in the absence of the grantees. Still, on account of my zeal for the case, I might have overlooked it—at least my *then* zeal for the case; it is all gone now.

Mr. ARNOLD. Mr. President, we now offer these books of minutes, kept by Judge Hubbell, in evidence here, and I will state to the counsel the basis of that offer. It has been sought to be established by the other side, and I suppose for an object, that a considerable time elapsed from the submission of this case to the Court, up to its decision. We have undertaken to account for that, by proving that the Court was doing a very large business, steadily engaged by jury trials, during all that time, and have proved a great many important cases, that were being tried. These books were kept at the time, of course, without any reference to any proceeding here, and they contain minutes of cases *seriatim* as they occurred, dates, hour of adjournment, hour of meeting, the testimony of every witness, and a perfect diary of proceedings in the Court. We offer them now, to show the business, which occupied the Court, in the intermediate time, and the nature and extent of it We offer these books, not in reference to their accuracy, but in connection with what we have already offered, in proof of what were the engagements of the Judge in Court.

Mr. RYAN. Do you propose to read them, Mr. Arnold?

Mr. ARNOLD. No, sir, but simply to submit them and call the cases in their order.

Mr. RYAN. If the gentleman was going to read them, I should only enquire how long he would be about it, and then go away and try to be back by the time he got through. But really, the gentleman has proved the closest application of the court. I do not see what the books will show in proof farther.

Mr. ARNOLD. They might show a vast amount of labor.

Mr. RYAN. I do not doubt it. I presume Mr. White testified to quite enough. He testified to constant occupation during that interval, if I understood him rightly, and I suppose that is all that is material in this case.

Judge HUBBELL. I beg leave, merely to say to the Court that, being upon trial here, charged with a corrupt motive, and not knowing what might affect or influence the minds of honorable men, seeking light upon this subject, I seek simply to show a record authenticated, as in my hand writing, of the proceedings of the court, taken down by me, running over several quires of paper, and running down to the time when that cause was decided, as evidence of the necessity which impelled me to defer the decision of that important cause. It is only to put myself fairly and honestly before the Court, that this is sought.

Mr. KNOWLTON. I would like to ask Mr. Emmons one question. Do you recollect how long this case was in argument, the last day it was argued?

A. I do not know that I recollect, specially the last day. It was usual to sit during the day, and two or three hours in the evening. I recollect that this cause was submitted after candle light. I believe I do not recollect his keeping us in court all day long without adjourning for dinner.

Senator DUNN. I would ask whether it is conceded that these are properly books of record of the Court?

Mr. ARNOLD. I call them records of the minutes.

Senator ALBAN. I would enquire whether the rules of the court, do not properly require a Judge to keep minutes, and so such minutes are properly records of the court?

Mr. ARNOLD. We do not claim that they are records in the technical sense of the term. They are only minutes kept by the Judge, and in his own handwriting.

Mr. RYAN. So far as I know it is a mere matter of discretion with a Judge to keep or not to keep minutes, and there is no rule of law about it.

Mr. ARNOLD, of counsel for respondent, submitted the proposition in writing, as follows:

"The respondent offers in evidence two certain books of record of the proceedings in courts, from the time the case of Perry vs Comstock and others was commenced, to the time of the decision of said suit, with a view to show the constant engagement of the Judge in jury trials during that time, and to rebut the idea of any improper motives in delaying said decision."

And the question being upon the admission of said books of record,

It was decided in the negative, Noes 21, Ayes 3.

H. D. BARRON was sworn and examined upon Article 11, specification 10.

Mr. KNOWLTON. I think the same thing is somewhere else, too.

Q. Where do you reside?

A. Waukesha.

Q. Are you acquainted with Judge Hubbell?

A. Yes, sir.

Q. Are you acquainted with Mr. Cook, District Attorney for that county, formerly. A. Yes, sir.

Q. Do you recollect the indictment that was found in Waukesha county in the case of the State against Jehiel Smith, for adultery.

A. I do.

Q. Before the trial of that suit did you have a conversation with Mr. Cook in reference to that indictment. A. Yes, sir.

Q. What did he say to you in regard to what his opinion of that case was, and his intention to enter a *nolle pros.*

Mr. Ryan. We object to that question. We should not object to it if Mr. Cook was here. No question was put to Cook that ought to bring out this question.

Mr. Arnold. Yes, sir, I think I asked him the question, whether he had any opinion in the case.

Mr. Ryan. I do not know whether you did or not. If you did I object to it.

Mr. Arnold. I will admit, frankly, that I did not ask him with reference to any interview with this witness.

Mr. Ryan. My impression is that you did not ask him with reference to any witness.

The several counsel here looked for Mr. Cook's testimony in the files of our report but not finding it readily, Mr. Arnold said: I think, with reference to saving the time of the court, I had better pass it and look for it at another time.

Q. Mr. Barron, are you acquainted with William K. Wilson? Have you ever had any communication with him in regard to his motives in making the complaint which he did to the Assembly and which was the foundation of this impeachment.

Mr. Ryan. One moment, Mr. Barron; that question, sir, we object to.—The Assembly of the State of Wisconsin prosecute this case, and not Wm. K. Wilson; besides, if he *were* the prosecutor, I don't know that his motives would affect this prosecution. He is not a prosecutor here, and he is unknown here, and the only formal notice of him is in the gentleman's opening.

Mr. Arnold. I would enquire whether he is not under subpœna?

Mr. Ryan. I do not know.

Mr. Arnold. I would enquire of the Managers?

Mr. Sanders. He is.

Mr. Arnold. I am perfectly aware of the fact, that he has not been a witness here and I believe he has never been; but it is conceded now that he has been here in this trial under subpoena. I am just as well aware of the fact that he has never been a suitor in any court of the respondent, and so could never have had cause of grievance against Judge Hubbell; but he was, either from his own motives, from his own promptings, or the promptings of others, I know not and care not which, the medium of communication, the instrument of the Assembly, in preferring these charges. This outrage upon public justice, against the respondent at bar, it was alleged that the basis of this impeachment was laid to the Assembly. It was he who assumed to represent for the time being, "all the good people of the State," to use the language of the impeachment; to represent to the Assembly that Judge Hubbell had been guilty of crimes and misdemeanors, and to ask the interposition of that body. Now, we wish to show what he himself has said in regard to his motives, in that undertaking. In ordinary criminal prosecutions, it is competent if it be possible to show the motives of the prosecution, to show what has governed the prosecutor, and whether he is really interested, and has instituted proceedings for the cause of public justice. The learned counsel has throughout, likened this proceeding to a trial under an indictment, and a trial by a traverse jury. It is true that the Assembly, so far as this court is concerned are the respondent's prosecutors; but Mr. Wilson stood behind them, and was the original prosecutor

before the Assembly. That is the reason, and I stated it so fully, in my opening, that I will not enlarge upon it—that I wish to show his motives, as stated by himself, and that there may not be any misrepresentation, I propose to show that Wilson stated to the witness, that he never had been a suitor in Judge Hubbell's Court, but that Judge Hubbell made a remark once to a jury, of whom he was one, which he considered insulting, and on that account, he should follow Judge Hubbell up, that he would be revenged on him, that he would follow him through this impeachment, and after the result of it he would kick him.

Mr. RYAN. That might be material if this Court could bind over Mr. Wilson to keep the peace. That is the only reason that could make it material. Seriously, sir, the Assembly appear here as prosecutors, and it is stated to this Court, that they are improperly urged on by Wilson, or by anybody else, from any motive, proper or improper; and I make the objection, the more strenuously, because Mr. Wilson is not before this Court, and has no means of protecting himself; and because not appearing here, he is just as well entitled to protection in this Court, in every respect, as any other person who has nothing to do with this record, or with this trial.

The proposition was submitted by Mr. Arnold, counsel for respondent, in writing, as follows:

"The respondent offers to show by the witness, Henry D. Barron, that William K. Wilson, made the complaint to the Assembly, against the respondent, out of which the impeachment has grown, from malicious motives; that he stated to the witness that he was never a party or suitor in his Court; that he was one of a jury to whom the Judge made a remark on the rendition of their verdict, which he conceived to be insulting, and that he would be revenged against him; that he had spent six months in hunting up evidence against the Judge; that he would follow him through the impeachment, and would after it was over, boot or whip him."

And the question being upon the admission of said testimony, it was decided in the negative, unanimously—Noes 24.

J. GILLETT KNAPP, was sworn and examined upon Article 4, Specification 2.

By Mr. KNOWLTON.—*Q.* Do you recollect the case of Wm. S. Hungerford, against Cushing and others.

A. I recollect of being counsel for Mr. Hungeford, against Cushing and others, in the Dane county Circuit Court.

Q. Do you recollect of exceptions being taken to the answer of Mr. Rantoul.

A. I was first engaged in that case before the spring term, of 1850. The first I knew of it, exceptions were filed by Mr. Knowlton, and were ready for argument.

Q. Do you recollect on what grounds the exceptions were taken, against Cushing's answer, whether for insufficiency, or impertinence, or what.

A. For both.

Q. For what causes were Rantoul's answer excepted to.

A. For the same.

Q. Were you present at the time of the argument for insufficiency, before Judge Hubbell.

A. I was.

Q. Who was the counsel on behalf of the defendant.

A. Smith and Parris. Parris resided at that time, at Mineral Point.

Q. Do you remember at that time, whether Collins or George B. Smith were present.

A. They were not employed till afterwards.

Q. How long after.

A. Not till the next term at least; Geo. B. Smith never was in the case, to my knowledge.

Q. At the time the exceptions were disposed of, were Smith or Collins present.

A. Whether they were present or not, I do not know. They were not in the case.

Q. Just see whether anybody else were present, except Parris and yourself.

A. I have no recollection of seeing Geo. B. Smith there, nor Collins. I presume they were not there.

Q. I wish you to state whether considerable time was not taken up, in arguing the sufficiency of Cushing's first answer?

A. I think it was two days.

Q. Do you remember our arguing the merits, or subject matter of the bill of Hungerford or not, or whether that was thoroughly argued and discussed?

A. The exceptions for insufficiency reached to the full merits of the bill, and brought the whole merits of the bill into controversy. There were a large number of exceptions.

Q. Did we discuss the merits of that bill, thoroughly?

A. Yes, the merits were discussed, because the exceptions reached through the bill.

Q. Do you remember that the exceptions were discussed, before Mr. A. Hyatt Smith announced that the answer was bad?

A. My recollection is, that you stated the exceptions, occupying nearly a day in the argument, and Parris and A. H. Smith stated their positions and arguments, and occupied nearly a day. My recollection is, that they were nearly all disposed of, when Smith said he would rather undertake to file a new answer, than to answer the matters excepted to.

Q. Do you recollect that very shortly after the disposition of the exceptions to Cushing's answer for insufficiency, we took up the exceptions to Mr. Rantoul's answer?

A. They were taken up immediately.

Q. Do you recollect that Mr. A. Hyatt Smith excepted, that our exceptions were bad in point of form?

A. A question of that character arose—that we should have alleged in the exceptions, that the substance of the bill was unanswered properly.

Q. Do you recollect that Judge Hubbell said, he would decide that the exceptions were bad in point of form, or something to that effect?

A. I am not certain. I know that he said he would decide that the exceptions were bad, but whether in point of form, or for other reasons, I do not now recollect. I cannot state what the order was, but my impression is, that because we did not file a replication to the answer of Mr. Rantoul, it was a uniform ruling against the exceptions, and that we must file a replication afterwards, or reconsider the exceptions. It was merely for the purpose of exposing them at that time.

Q. Do you recollect that the Judge said it was quite immaterial what they answered, for Mr. Cushing could not answer the bill?

A. That is very nearly the substance. Judge Hubbell said, he would rule against these exceptions, and it would matter little to the complainant, whether Rantoul answered the bill or not, as he was a mere agent, or as good as an agent of Mr. Cushing; and that Mr. Cushing must answer the bill, and no answer of Rantoul's could affect the question at issue.

Q. Do you remember his saying, that Rantoul and others were Cushing's under-strappers.

A. I know you said so, and I thought so too.

Q. Do you remember that Smith, after the Judge made that remark, got up and found fault about his prejudging the case?

A. I do not.

Q. Do you remember a remark like this—that Cushing had not answered the bill, and could not answer it?

A. I do think he did.

Q. Are you confident? A. I am.

Q. Would you have recollected it if he had?

A. I think I should have remembered it.

Q. Do you recollect that exceptions on the score of insufficiency of the answer to Cushing's second answer, were filed?

A. They were. The exceptions to the second answer were filed 22d June, 1850.

Q. Do you remember whether they were ever argued before any officer, or not?

A. I do not. They were not disposed until the October term of the Circuit.

Q. How were they disposed of—were they argued?

A. Well, sir, there was not a formal argument in Court. They were submitted to Judge Hubbell at his room, in the United States Hotel.

Q. Do you remember of Smith's making any request in relation to that matter, about explaining anything in the exceptions?

A. Yes, I remember that Smith was with the counsel for the complainant. I was present, you were present, but whether Collins was, I cannot say. The 2nd exceptions were some four in number, perhaps five. They set out, part of them, the words of the bill that were unanswered, and part of them, requiring Mr. Cushing to answer in a particular manner. Mr. Smith had much conversation with the Judge, to show that he had answered the parts of the bill, that were excepted to, and undertook to explain to him wherein it covered the point of the bill.

Q. How long were we there?

A. The whole evening. It was in the room over the stage office, in the southeast corner of the United States Hotel building. And that is all that ever transpired in the way of exceptions. There was no other argument.

Q. Do you recollect that about the time the cause concluded, and previous to its final submission as to all the defendants, except Cushing, that Smith was in town?

A. He was in that room, when the counsel for the complainant were there

Q. Do you remember what transpired in that room between yourself, Jud

Hubbell, A. Hyatt Smith, and myself, in relation to the time that Judge Hubbell could spend in hearing the matter argued?

A. He said he could spend no time. It was in the time of the Supreme Court, and he would take the bill and read it over.

Q. Do you remember of Smith's saying anything on that occasion, to the effect that it would take a week to argue the cause?

A. I am not aware of any such allegation.

Q. Do you remember Judge Hubbell saying, he would not hear an argument of over an hour?

A. I do not think he did. If he did I don't recollect it.

Q. Do you remember that he said, the case was now reduced to a single point, and he did not require any lengthy argument upon it?

A. I know that he had stated so, and that that was true.

Q. But don't you recollect that that was so stated. The conversation I want to call your attention to, occurred a day or two after it was finally submitted. Do you remember of Smith's being there, and Judge Hubbell was talking about the length of argument, and that he stated, that it had been fully argued upon the exceptions, and that the case was now reduced to a single point, and it would not take a great length of time to argue it?

A. I do not remember his saying so.

Q. Were you present at the time when Hyatt Smith signed the stipulation, in relation to that argument? A. I was.

Q. Did you hear him say what the reason was, that he would stipulate to submit the case without argument?

A. I heard him say, his railroad business was such, that he couldn't attend to it. I heard him express a willingness to submit it without argument, on account of his business, saying that he could not stay to argue it.

Q. Did he state that he would?

Mr. SANDERS. Suppose you tell him to give the conversation, and not put every question in quite so leading a manner.

A. He said he must leave and did leave immediately after it was submitted.

Cross Examination.—Q. Did you hear Mr. Smith complain of not being allowed time to argue that cause?

A. I never heard him make such a complaint. I think likely he asked to have that cause postponed because we wanted to get possession of the property.

A. W. RANDALL, sworn and examined.

Witness. I reside in Waukesha and am an Attorney.

Q. Do you recollect a suit pending in Waukesha of Simpson against Howe.

A. I do. I tried that suit for Howe, the defendant. It was brought on a note and account.

Q. Do you recollect the circumstance that on the note there was an endorsement of $40 which was positively erased by a pencil mark?

A. I recollect that there was an endorsement, but it was erased by pen and ink. It was a pretty strong erasure. I do not recollect about the pencil mark.

Q. When did the suit come on for trial?

A. I think it was at the November term, 1850.

Q. Will you state whether the note was left to go to the jury as it was, and that the Judge instructed them to take it as they found it.

A. The Judge did tell the jury to take the note as they found it.

Q. Did the jury allow or disallow the endorsement?

A. The jury disallowed it. They threw aside both the verdicts and allowed the amount with interest.

Q. Subsequently, upon application of Mr. Byron was a new trial granted on account of that proceeding?

A. Yes, sir. Because we did not think the Court charged the jury full enough in relation to it. It was, perhaps, careless on our part, when the case was submitted that we did not call attention more particular to it.

Q. Was that the complaint, that the Judge left his charge in such a way?

A. Yes, sir, we thought the Judge had not charged full enough, and we were careless in not calling his attention more particularly to it.

Q. Do you know the fact of Mrs. Howe's calling upon Judge Hubbell in relation to that charge?

A. I do not.

Cross Examination.—Q. Is that the affidavit of Mr. Byron of which you speak, (handing the witness a paper).

A. Yes, sir. But I supposed it was an affidavit of a Clerk of Mr. Byron.

Q. Where is the note the erasure was made from.

A. That I do not know. I presume Mr. Wright has it, if it is not among the papers of the case. After the trial Mr. Wright deducted the amount that should have been deducted by the jury, and disposed of the balance.

Q. Do you recollect when that cause was tried, and the verdict rendered.

A. My recollection is that it was at the November term, 1850.

Mr. RYAN here read a record in the suit, and then asked the witness—Is that the date according to your recollection that that trial took place?

A. I cannot state the date. My impression is, that it was at that term of the Court, November.

Q. Mr. Randall, I find here a motion filed by your firm on the 9th of November for a new trial. Was that the motion for a new trial which you made?

A. I presume it was.

Q. When was a new trial ordered?

A. Well, sir, I do not recollect. It was done before the next term. It might have been that same term. My brother, I think, made the motion for a new trial.

Q. Was not that order for a new trial made in March, 1851.

A. Well, it was my impression that it was, as I said, the next term.

Q. Cannot you state positively that it was that term?

A. No, sir, I cannot.

Q. I ask you these questions because there is no transcript here.

A. Well, I cannot state positively.

Mr. ARNOLD. That is undoubtedly the fact, the Byron affidavit shows so.

Mr. RYAN. That is subscribed, March 17th, 1851.

Mr. ARNOLD. Yes sir, that is right.

Q. Was the motion for a new trial granted on this affidavit?

A. I cannot state as to that. I can state the ground argued for a new trial.

Q. Was any notice of a hearing of that motion given to Mr. Wright, the plaintiff's attorney, at any time?

A. I cannot say distinctly whether there was or not. I know that he had knowledge of the fact, and when the case came up he spoke to it before the Court. He had a conversation with the Court and the attorneys. It was at the time the motion was granted. I am quite confident it was so.

Q. Do you recollect the time limited by the rules for making a motion for a new trial after the verdict?

A. I think it is two or three days.

Mr. ARNOLD. Is there any rule about it? I cannot find any such a rule.

A. I think there was such a rule.

Q. Are you not mistaken in saying that Mr. Wright was present?

A. I can give the reasons why I think he was there—because a question came up there, as to whether the motion was filed in time, my brother contending that there was some error in the date of filing. At any rate the discussion arose in relation to the error of date, and I think in relation to a motion for a new trial.

Q. Might it not have been in November? A. I think not.

Q. Were not the costs taxed at the November term as upon judgment.

A. Well, that I do not know. I believe they were paid. I think there was a judgment filed. He had gone and taxed his costs and entered up judgment.

Mr. ARNOLD. Do you recollect the fact that Mr. Wright entered up judgment, and issued execution; and then the next term, did'nt you have quite a contest about whether it was in time or not? A. Yes, sir.

MYRON H. ORTON, sworn and examined upon Specification —, Article two.

Q. Do you know Jonathan Taylor. A. I know him.

Q. Are you acquainted with his hand writing?

A. I have seen him write, and I think I am acquainted with his hand writing.

Q. Will you look at these mortgages and see if you think they are his hand writing.

A. I should say that that was his hand writing. I should say also, that this other mortgage is in Taylor's hand writing.

Mr. ARNOLD. We offer in evidence these two mortgages, Mr. Ryan.

Mr. RYAN. I should like to know the object.

Mr. ARNOLD. To rebut the testimony of Mr. Taylor. He testified that at the time of assigning that judgment he was not indebted to Judge Hubbell in any manner whatever.

Mr. RYAN. I am inclined to object, for the reason that Taylor is not here.

Mr. ARNOLD. We asked Taylor about these mortgages when he was upon the stand. (Mr. Arnold now read the mortgages to the Court.)

Judge HUBBELL. Mr. President, the respondent is about to complete his testimony, and no doubt will be able to do so, before the closing hour, with the exception of a single witness, whose attendance is expected from Milwaukee. He has been telegraphed to, and is probably now on his way. I rise to state, at the request of one of my counsel, that in consequence of testimony which has been given, it will be necessary to prove a fact which the other of my counsel, (Mr. Arnold,) alone knows, and which I deem material to my defence. Although greatly to my regret, and entirely against his own wishes, I feel bound to call upon him, and to require that he shall submit to an examination as a witness, Mr. Arnold will please take the stand.

JONATHAN E. ARNOLD, sworn and examined by Judge Hubbell.

Q. Mr. Arnold, were you acquainted with the suit of Perry and others, against Comstock and others.

A. I was, sir, I brought the suit for the complainant.

Q. Do you remember the time the decision of the case was made.

A. I remember about the time, I was not in Milwaukee at the time the decision was made.

Q. Where were you when the decision was announced.

A. I arrived in New York on the evening of the day it was said to have been announced.

Q. At what time did you leave Milwaukee, for New York.

A. I left on Monday morning of the 9th of June.

Q. Before leaving, at any time, did you call upon me in regard to that suit.

A. I did.

Q. Will you state what conversation took place in that interview.

Mr. RYAN. I do not know that I wish to object, because I don't know what the object of the gentleman's testimony is; but it strikes me, as clearly improper to prove any conversation between the witness and Judge Hubbell.

Judge HUBBELL. Well, we will omit the conversation. Did you call on me.

A. I did. Being about to start for the Baltimore Convention, as mentioned here the other day, and expecting to see the plaintiff, Mr. Perry, in New York, and being desirous to learn the result of the case, if it had been arrived at, that I might be able to communicate it to him, on my way through New York. I called on Sunday afternoon, at Judge Hubbell's rooms, in the United States Hotel. I found him in his room engaged in the examination of the papers in that case. They were spread out before him on his table. I told him I was about to leave early the next morning, and I should see the plaintiff in New York, and if he had made up his mind how he was going to decide that case, I should be glad to know it, that I might inform the plaintiff of the result. He stated that he had the papers before him, and had been examining the case then for the first time, and then added that he should have to sustain the attachment, and as soon as he could arrange his thoughts and prepare himself for it he should announce his decision in Court.

Q. Was that before Sanderson returned from New York?

A. I cannot say positively how that fact was. I did not know of Sanderson's returning.

Q. Have you stated all the conversation relating to that matter.

A. I remember nothing farther on that subject.

Cross Examination.—Q. You say you got to New York on the evening of the day of the decision. How many days, before that decision was announced, was this interview?

A. The decision arrived by telegraph, in New York, on Wednesday, the 9th of June. I arrived in New York on the evening of the 9th, having left Milwaukee on the 7th; and it was the day before I left, that I called upon Judge Hubbell.

Q. What time on Sunday was that, Mr. Arnold?

A. It is impossible for me to say. I think it was in the afternoon. It must have been before 5 o'clock, I am quite confident of that, because I recollect of leaving town to go to my father's, some three miles out, about that time.

Q. Who retained you in that suit?

A. Mr. Sanderson retained me for the the plaintiff, Mr. Perry. I had correspondence with Mr. Perry from time to time, after the suit was commenced, in relation to payment for my services, and other matters.

Q. Now you mention payment, I hope you came in for a fair share?

A. I came in for $1,000, Mr. Sanderson paid part of it himself.

Q. At the time you commenced with Sanderson, had you known Perry?

A. I knew nothing about him, except through Sanderson.

Q. Prior to that interview of yours, with Judge Hubbell, had you received any information from Sanderson, as to what the result would be?

A. Not as coming from Judge Hubbell. Nothing more than those speculations that pliant and impulsive men deal in—speculations of men who are by turns discouraged, and then hopeful and sure. I will give you a specimen which shows the character of the man very well. On one occasion, when I was absent from Milwaukee, without any communication with the Judge, and without hearing the case decided, he telegraphed to me—(Mr. Ryan interrupted this reply, so that the witness did not conclude it.)

Q. Have you not heard Sanderson offer to bet on the decision? A. No, sir.

Judge HUBBELL. I will ask you as to what I have heard rumored. Did you, that Mr. Finch offered to bet $1000 they would get the case.

A. I do not recollect it.

Q. Did Mr. Sanderson tell you that. A. I do not remember that either.

Mr. ARNOLD, (as counsel.) I am instructed now to say in behalf of the respondent, that his testimony is closed, with the exception of the testimony of Mr. Hart, the witness who is said to be on the way. We wish to reserve the privilege of asking him two or three questions, to an entirely subordinate point, when he arrives. I would like to enquire of the counsel for the Managers, if they expect to be prepared to go on in the morning with rebutting testimony. I am extremely desirous of going to Milwaukee myself, if possible.

Mr. RYAN. We are not entirely able to say, and we sent telegraphic despatches this morning, which however we heard had not gone, as the wires are down. Last evening a subpoena was sent by mail, for one witness whom we expect to arrive to-morrow. The names of the other witnesses have been suggested by the Managers to-day; and it was a matter of debate how many of these witnesses it was necessary to have here.—We had not time to conclude upon that subject. It strikes me however, that our witnesses will be getting along about the time we want them. We will be able to decide certainly this evening, but I cannot say further now.

On motion of Senator Dunn, the Court adjourned till the next morning, at 10 o'clock.

TWENTY-SECOND DAY.

FRIDAY, July 1.

MORNING SESSION.

JOHN HART was called on the part of the defence, and sworn and examined upon Article 4, Specification 3.

Q. Where do you reside? A. I reside in Milwaukee.

Q. Were you acquainted with Wm. Hart in his life time?

A. Yes, sir, he was my brother.

Q. Has any administrator been appointed on his estate?

A. Yes, sir, I am his administrator.

Q. Did the papers of your deceased brother pass into your hands on your becoming administrator. A. I think they did.

Q. Have you examined his papers with a view to find any papers in relation to a divorce between him and his wife Eliza. A. Yes sir, I did.

Q. Did you find any papers?

A. Yes, sir, two or three. I found in the first place a copy of the decree. I afterwards found the receipt of Albert Smith, and the receipt of Henry Kirk White.

Q. Have you examined the papers thoroughly for the purpose of finding whether any money was paid to Judge Hubbell.

A. I have, and could not find any such papers.

Q. Was your brother in the habit of taking receipts for money that he paid.

A. I think he was. There were a great many receipts put up in a package by themselves, and I examined them and could not find any such receipt among them.

Q. Have you those papers which you mentioned?

A. I have, (the witness produced them.)

Q. Since you have been appointed administrator has Judge Hubbell called upon you for the payment of any demand for services rendered to your deceased brother? A. No, sir.

Q. Did he ever demand an examination of the papers in the divorce case?

A. No, sir.

Q. Have you ever had any conversation with him upon the subject of this divorce matter till the last evening.

A. I do not know but I have. I was subpoenaed by Mr. Ryan before the committee. Judge Hubbell called on me then.

Q. When were you subpoenaed by him?

A. In February I think. I was requested to look the papers over, I did so, found these papers that I have brought now, and presented them to the committee. They examined them and said they did not want them.

Mr. KNOWLTON. Mr. Ryan, we offer these papers in evidence.

Mr. RYAN. I cannot see their relevancy in this case.

Judge HUBBELL. When did your brother die?

A. Four years ago in August next.

Cross Examination.— Q. Mr. Hart, you say that I subpoenaed you. When and where was it?

A. You told me you had subpoenaed me.

Q. Had you ever seen me in your life before.

A. I had seen you, but not to have any conversation with you.

Q. Had you seen Judge Hubbell between the time you were subpoenaed and the time you came before the committee.

A. The Judge after I had been subpoenaed came to me to know if I was going to Madison. I told him I had been subpoenaed. He said he hoped I would go and he wished every one to go who knew anything against him. He said it was a malicious prosecution, or something of that kind.

Q. How soon after your brother's death did his papers fall into your hands.

to show that the Court required that I should be security as solicitor, before I prepared the bond. I was disposed to avoid the bond they proposed, and take the ordinary form of bond.

Q. Do you recollect whether Judge Hubbell declined hearing the motion to dissolve the injunction until the matter of these bonds, or rather orders, had been secured to be paid into Court.

A. Yes, sir, he required that security should be arranged before he would entertain the motion at all, and when that was arranged he said he would the next day hear the motion to dissolve the injunction.—The next day the motion prevailed and the injunction was dissolved.

Q. Do you remember on what grounds that injunction was dissolved.

A. I had referred to my points before I came away, and had intended to bring them, but have omitted to do so, after all. I made several distinct points, I can remember some of them, but not all. One was, that there was no equities in the bill, and that if the bill secured any remedy, it was a remedy at law. Another was, that he was entitled to no relief either at law or equity. I think another point was, that having amended the bill after the injunction had been granted on the original bill, that did of itself, create a dissolution of the injunction. There were some others of a technical nature. There were some seven or eight of them, in all.

Q. Were you present when the motion was decided by the Court. A. I was.

Q. Do you remember of Judge Hubbell's giving any particular reason on the points that had been insisted upon, as being satisfactory for the purpose, to his mind, of sustaining the motion.

A. I cannot say farther than that he went on to state the reasons for dissolving the injunction, and these reasons were among those I assigned. I do not recollect which point I dwelt upon the most. I recollect of his commenting upon the points I had insisted upon in disposing of the motion. He took them up as points presented by me, but did not suggest any new ground.

Cross Examination.—Q. Are you able to state positively thatat the period of the suit, before security was required of you, the motion to dissolve the injunction was mentioned by you before it was mentioned by Judge Hubbell.

A. Well. Mr. Ryan, I cannot say that in my memory, I have a distinct recollection that it was, but my present recollection is strongly, that I suggested the dissolution of the injunction.

Q. When you say an impression, do you mean recollection.

A. As resting in my memory?

Q. Yes, sir.

A. If I was required to answer affirmatively, I should say I had a recollection.—At the time Smith served a copy of his amendment to the bill, I intended to move to dissolve; and when an order to show cause, was required, that was what I designed to do—to have the injunction dissolved.

Q. But as a distinct affirmative circumstance, I understand you to say, you have no recollection which of the two, you or the Judge, first mentioned the motion to dissolve the injunction.

A. I have no recollection that the Judge said anything about a motion to dissolve; but I do recollect that I made a motion to dissolve the injunction.

Q. Was the assumption of your liability, as a solicitor of the Court, made on the same day, or a different day, from the motion to dissolve the injunction?

A. I think it was the same day.

Judge HUBBELL. Do you mean the making of the motion, or the arguing of the motion?

Mr. RYAN. Well, in that record it is very difficult to say; and I doubt if any of us know.

Judge HUBBELL. I think you will find the witness does know.

Mr. RYAN. I apprehend not; but we will see. Mr. Watkins, was any notice of that motion, at that time, served upon Mr. Smith? A. I think not.

Q. You say that it is since he served a copy of the amendments to the bill, that you concluded to renew that motion? A. Yes, sir.

Q. Did you rely upon that amendment, as any part of the grounds of your motion? A. I did.

Q. That amendment was after the first motion to dissolve the injunction?

A. Yes, sir.

Q. Then, was not your second motion to dissolve the injunction, a different motion from the other?

A. The motion was not different, but there was an additional reason for it.

Q. Was it not a different motion, when it was founded upon a paper, which was not in existence, at the time the original motion was made?

A. Well, Mr. Ryan, I state the facts, from which you are able to draw conclusions as well as I am.

Q. You are a witness, and not I, and I ask if it was not a different motion?

A. Well, sir, you have the same means of information, from which to determine, that I have.

Q. Have you answered that that was the same motion?

A. I do not know but that I have.

Q. From whom did the proposition come, that your liability should be taken, as a solicitor, in Court, for the payment in Court, when required, of those bonds or orders—you said bonds, they were orders, were they not? A. Yes, sir.

Q. Well, then, from whom did the suggestion come, that your professional liability should be taken instead of other security?

A. That came from Judge Hubbell.

Q. From whom did the suggestion come, that any security should be given?

A. I do not know that there was any other suggestion than that.

Q. The attachment was moved for, because he had received the orders, and had not paid them into Court?

A. It was moved for, for the violation of the injunction; and I think that *was* a violation of the injunction. He had a license to pay them into Court. That he had not paid them into Court, was the ground of attachment.

Q. From whom did the first suggestion come, or how did it arise, that a bond, or any security, should be taken for the payment of the orders into Court?

A. It originated, so far as I know, with Judge Hubbell.

Judge HUBBELL. I wish you would reflect upon that.

A. Will you ask the question again, Mr. Ryan?

Mr. RYAN. I ask you from whom the suggestion first came, that any security, bond, or other should be taken, in lieu of the payment of the orders into Court? A. I think, Judge Hubbell.

Q. Did Judge Hubbell assign any reason why he made the suggestion, to receive security, in place of obedience to the order, he himself had made?

A. Well, it came up in this way. I was pressing my motion to dissolve the injunction, without the payment of the orders into Court. He refused it, till I gave this security, that the orders would be paid into Court. There's where it originated.

Q. But the order by which it was discharged, was to pay the orders into Court. Now, in some way amongst you, will you state whether it was Judge Hubbell or yourself who suggested, that in place of paying the orders into Court, security of some kind should be given, that these would be paid into Court. Now the order to pay the orders did not require a bond for their payment, but required the payment of the orders themselves into Court. Now, I want to know whether it was upon your suggestion, or, whether it was upon the suggestion of Judge Hubbell, that some security should be given for their payment, instead of the actual payment into Court, of the orders themselves?

A. I can only state as I stated before, that I was pressing my motion to dissolve the injunction. The Court refused to entertain it, unless I would become responsible, as a solicitor of the Court, that the orders should be paid.

Q. But the order which Cook was alleged to have violated, did not require you to become responsible, as a solicitor of the Court. You had nothing to do with that. That order simply required the payment of the orders into Court. Now, what I want to know, is, whether Judge Hubbell made the suggestion of the substitution of security for payment, instead of the actual payment of the orders into Court; or, whether he gave any reason for that substitution, of a thing which was not in the order, instead of the thing which was in the order?

A. He only refused to hear the motion to dissolve the injunction, in case I would not enter into that stipulation. He certainly seemed to be reluctant about it, sir.

Q. Do you know where those orders were?

A. No, sir. I never saw them.

Q. Did Cook ever tell you what became of those orders, in those conversations you say you had with him? Q. Never.

Q. At the time you did finally assent to the entry of your liability, as a solicitor of that Court, whatever it was, was it upon the persuasion of Judge Hubbell, that you suffered that liability to be entered?

A. Well, not upon his persuasion, unless you call it persuasion, that he insisted upon my doing it, before he would entertain the motion to dissolve.

Q. Well, if he had not suggested to you to enter that liability, would you have entered it? A. No, sir.

Q. Having once declined to enter it, would you still have entered it, unless it had been pressed upon you by the Judge?

A. I would not, unless he still refused to entertain the motion to dissolve.

Q. About how long was that responsibility hanging over you?

A. Well, sir, I do not know.

Q. Was it one hour?

A. I could not say. It might have been half an hour, or might have been two hoursand a half.

Q. You say that prior to coming out here, you referred to the points which you made upon that motion.

A. I referred to all the papers I could find in that case. I found my brief upon that motion.

Q. At what period in the case, did you make that brief?

A. It was the second step in the trial of the cause.

Q. Did you make it after, or before the first motion to dissolve the injunction?

A. That brief to which I referred was a brief made after the amended bill was passed. That was after the first motion to dissolve the injunction was made. There was no date upon that brief, by which I could tell that fact, and I only know it, by the certainty, that it had that point in it, that the amended bill was the dissolution of the injunction.

Mr. KNOWLTON. When you speak in relation to this motion, of its being the same motion, do you mean to be understood that you were pressing the motion, which had never been finally disposed of by the Court; and that upon that occasion, when you came to the argument, you insisted, as an additional reason why the injunction should be dissolved, that the party, by his own act in amending the bill, worked a dissolution of the injunction, and was it one and the same motion in point of fact?

A. I must reply to you as I did to Mr. Ryan, that I can give you the facts in the order in which they occurred and you must draw your own conclusions from them. I made a motion which was founded upon the bill. The Court did not entertain that motion except casually, and modified the injunction, whichboth parties agreed to and it passed off in that way. When he made his motion to amend I insisted again that the motion should be dissolved, insisting upon the same points which I had first made, and upon the additional reason that he had amended his bill, and that that in law would operate to dissolve it.

Q. Precisely, that's the state of facts I was enquiring of you. I understand you, Mr. Watkins, that Judge Hubbell declined to hear your motion to dissolve or your argument upon it, until these orders were paid into Court, or the payment of them secured either by your becoming personally accountable or in some other way.

A. Yes, sir, he required that I should pledge my faith as a solicitor of the court, which I did not like to do.

Q. Do you remember of his giving any reason like this, that if a bond was given, all that could be done upon it in case the orders were not forthcoming, would be to bring a suit upon it; and that if you became personally liable, the Court could dispose of it.

A. I do not recollect that the court gave any reason upon it. That was my reason for preferring it.

Judge HUBBELL. Do you not know whether the Court was for some weeks anxious to have Mr. Cook arrange the matter of these orders. A. Yes, sir.

Q. Did I not speak to you once or twice in Court about it? A. Yes, sir.

Q. Well, did not I tell you that I would not do anything about that injunction until Mr. Cook had arranged the matter of the orders.

A. You complained that these orders had not been brought into Court, and that unless security were given that they would be brought in, you would not do anything about it.

Q. When that responsibility was obtained then I went on and heard the motion did I not? A. Yes, sir.

Q. Do you know whether I knew anything about what had become of these orders any more than you did? A. No, sir.

Q. Did you have from me any instruction, directly or indirectly, how that motion would be decided, until after the argument. A. None at all,

Q. Did you in that argument, or did you not—or rather what was your claim in that argument in reference to the injunction.—Was it not that this injunction had lain upon six months, or more, and which tied up your matters, when, if the Court had looked into your bill in the first instance, the injunction never would have been granted. A. That is the ground I took.

Q. Do you recollect any remarks made to Smith whether, upon the facts, he would have granted the injunction in the first instance.

A. I cannot say. That is not in my memory.

Q. Was the argument for the dissolution of the injunction based upon the bill? A. In part.

Mr. Ryan. Will you explain then how the weight of the injunction had lain so long on your client, when he got the orders he kept them.

A. I have not said the weight of the injunction lay upon my client.

Q. That is the substance of what I understood you to say.

A. I said if the Court had looked into the injunction in the first instance, it never would have been granted. I did not say the weight of it had been lying upon my client for six months; my client said, and I said it was wrong to be exposed to the injunction.

Q. Well, how could he be exposed to the injunction, or how could it harm him, if all the while he had the orders?

A. Well, sir, I supposed he could be exposed to the injunction even if he violated it.

Q. But he got the orders and kept them.

A. Well, that I had nothing to do with.

Q. But I wanted to get at your idea?

A. If you understand that I said my client was suffering from the injunction, you misunderstood me.

Alexander L. Collins was recalled on the part of the defence.

Mr. Knowlton. I wish to ask you, as there is some difference of opinion about it, whether you have testified that in the argument upon arrest of judgment in the case of the State against Haney, of which you have spoken somewhat, the position was assumed by you on that argument, that that indictment was not an indictment, as it was framed, under the 35th section of the Statute, which provides for the punishment of him who shall assault another, being armed with dangerous weapons.

A. I recollect that the indictment, as I supposed, was predicated upon the 35th section. I am not familiar enough with the indictment, to say whether it was predicated upon the 35th section, though as I understood it, it was so intended. My motion in arrest of judgment being made, I assumed that the indictment was not a good one under that section of the statute, and I thought it was not a good indictment at all. I cannot recollect all the positions I assumed, but I recollect a general idea of what my course of argument was. The indictment charged an assault, and then independent of that averment, went on to state that the defendant was armed with pistol and gunpowder and that he fired against the said John Doe, with intent to murder. My argument was, that the intent to murder, was not connected with the assault, at all. A good deal else was said, I recollect that while I was arguing the motion in arrest of the

judgment, Judge Hubbell called my attention to the 45th section of the Statute, and asked me if I did not think it a good indictment under that section. I recollect of arguing that it was not a good indictment under either of these sections. That is the most of my recollection. Judge Hubbell upon the bench, perhaps had some disputation with me, as to whether it was not a good indictment under the 45th section. I was very clear it was not good under the 35th section, and perhaps that if it could be sustained under any section, it might be under the 45th section.

Q. Do you remember that he did hold that it was a good indictment under the 45th section?

A. I believe he did. I do not recollect that the Judge stated the fact in deciding the motion in arrest. He kept the matter under advisement, and the motion in arrest was finally overruled. I do not recollect that I heard Judge Hubbell say that the indictment was sustained under one or the other of the sections. I recollect his suggesting and arguing the matter with me to some little extent, that it would be a good indictment under the 45th section.

Cross Examination.—Mr. Ryan read the 45th section of the statute, and asked the witness—Now as to which of these assaults with intent to murder, did Judge Hubbell suggest that that indictment might be held good?

A. Well, sir, I do not remember what his argument was upon the subject. It was not lengthy at all. I do not know that he stated what it was for.

Q. Which part of the indictment was it that he maintained might be held good under that section—the clause which charges an assault and battery, or the clause which says Haney had a pistol loaded with materials you have stated, and did shoot.

A. Well he did not decide it. He followed up the suggestion with something in relation to the argument. I contradicted him at the time, whatever it might have been.

Q. Well, I only wanted to get at the idea that the suggestion ever entered any human being's mind under the 45th section, and not under the 35th. If I understand you, you were not present when your motion was finally disposed of.

A. I think I was, but I do not remember. If I was, I do not recollect what passed at that particular time.

Mr, Knowlton. I will now announce to the court that we have closed the testimony on the part of the defence.

Mr. Ryan. Mr. President; the managers of the Assembly instruct me to say that they propose now to introduce the two records, which they reserved to themselves the right of introducing; and also some additional papers which the clerk of the Supreme Court has found in the Kane case, which he could not find when he introduced the record before. They further instruct me to say to the court, that during the progress of the defendant's case, as rebutting testimony occurred to them, suggested by the case, the day before yesterday, some time in the afternoon, telegraphed for witnesses. That telegraph they learned, did not go till yesterday, as the wires were out of order. Night before last, they also sent a subpœna for witnesses, which was forwarded by the Sergeant at Arms, to be served. Our judgment, as well as we could form one, is, that the witnesses will be here in the stages which come in this evening. They instruct me farther to say, that there are some points of that rebutting testimony, which

they consider of great moment, and very material to this cause; and some other points, which they do not consider very essential to the cause, although, if it was here they would like to give it, and as a matter of convenience to this court, they are ready to submit the question to the court, whether they will await the rebutting testimony, or whether they will consider the cause closed now.—There are points of the expected testimony which I am very anxious to give. There are other points on which I would not ask this court to delay a moment, if they stood alone.

Senator LEWIS. I would enquire what the principal points that you expect to rebut.

Mr. RYAN. I have not the slightest objection to state what they are. We have sent for the witness, Jonathan Taylor, who was on the stand before, for the purpose of testifying to what we believe he will testify, that the signature of Henry P. Hubbell was not upon the assignment of that judgment, when he assigned it to Blossom.

Judge HUBBEL. Then he will testify to a falsehood.

Mr. RYAN. That may be, but if he testifies so, I should believe he testifies to a fact. We have sent for a witness who has not been here at all, to testify in relation to a case of Cogswell against Kane, in direct rebuttal of one statement made by Mr. Kane. These two points we consider very material. There is nothing else that we would ask the court to wait for.

Mr. KNOWLTON. What fact stated by Mr. Kane?

Mr. RYAN. The statement he made that he never saw that answer prior to its being brought to him by Cogswell. We propose to show that he did see it prior to that.

Mr. KNOWLTON. I do not, on this occasion, propose to be captious. I trust I can say to this court with an assurance, that I shall be borne out in that assertion, that I have not been captious in this trial; but I am constrained to rise and say that I cannot conceive the points mentioned by counsel, to be of any moment whatever, whether they establish these two particular facts or not. It is quite immaterial so far as the validity of the assignment is concerned, whether Henry P. Hubbell's name was attached to it or not. It does not establish the fact that the assignment was a forgery. He does not propose to show that Taylor did not execute it. We might safely say it was never subscribed by Henry P. Hubbell when it was assigned. That can make no difference in this case. In relation to the matter about Kane, that stands in precisely the same condition. It is quite immaterial. Mr. Kane says, that to the best of his recollection, he never did see that answer. It is quite an immaterial matter, and one that I trust no person of any sense whatever, would undertake to convict a man on impeachment. I cannot conceive that it would make either for, or against the accused; and so far as waiting for that kind of testimony is concerned, it appears to me as a useless waste of time. However, we shall submit to the judgment and discretion of the court. If the court think it material, we will continue the matter. We are not in an attitude to admit either of the facts which they propose to prove. We are perfectly certain that if Taylor comes and proves the absence of that signature, it is not true in point of fact.

Judge HUBBELL. Mr. President, it is my duty to submit with deference, and I shall submit with pleasure to any order which the Court may see fit to make with regard to delay, although it is inconvenient to remain here awaiting

the arrival of testimony. I have myself no anxiety or care upon the subject, except the detention which will be required, and the inconvenience of sitting here and abiding the results of sending for the witnesses. In reference to one of the cases mentioned by the counsel for the managers I beg leave to say this—Mr. Kane was called as a witness, simply to one fact, the fact that he had never employed me as his counsel, nor paid me as his counsel in any case in which Cogswell was concerned. In reference to that matter I have offered to submit to the managers. I know it is not legal testimony, still I have felt bound to renew the offer. I have offered to submit my private book in case of Cogswell, showing entries I made there during a period of three years between these parties; and showing the very fact, that in that very case of Parsons and Lawrence, the charges were made to George Cogswell, and the credits were made to him, including too, that very fact of drawing the answer of Kane; and Judge Chandler having testified in their behalf that he drew the answer for Cogswell, there was no other answer drawn except that. That is not evidence, but I offer now to submit it to the examination of the managers as evidence of *my* integrity in the case, of my relations alone while sitting in the case while Kane was concerned. and refusing to sit while Cogswell was a party. What the relations between Kane and Cogswell were, I do not know and do not care.

Mr. SANDERS. We do not make this request for the purpose of delay. I believe I can say, and the progress of this cause will bear me out in saying, that there has seldom been a cause in a Court of law where you had to get witnesses from all parts of the State, and all parts of the country, where the trial has progressed with as much rapidity as this trial has, since its comencement. We have, in nearly every instance, from the commencement up to this time, anticipated the witnesses, and in advance had our attachments issued. Even before an issue was formed in this Court, before the answer was served upon the Assembly, attachments were issued and officers dispatched to compel the immediate attendance of witnesses. As soon as we ascertained that this testimony was important, we prepared despatches for the telegraph, and it is only in consequence of the wires being down or out of order, that the witnesses are not here now; but in justice to the Assembly, we felt bound to submit this state of things, and our request to the Court. In relation to the importance of the testimony, we wish yet to offer; we do not propose to enter into any argument with the respondent, and counsel, further than to say this as to its materiality. We do deem it very essential to a fair understanding of the Taylor transaction, to show that the instrument was not executed as it purports to be executed; that it was not executed in presence of Henry P. Hubbell, as a witness, and that that name was put upon the paper at another time. It seems to me, that a bare statement of that fact would place it before the Court, as a thing necessary to be shown, if it can be shown. So far as regards the other branch of the testimony which we expect, I will say that it is not always necessary to establish the relation of counsel and client, by the payment of money; but there are other questions entering into that relation, and questions of some importance; and we conceive that it is of importance, to show the position of the Judge in the proceedings, to show that that answer was submitted to the defendant, Kane, and was by him examined during the progress of its being drafted; and that it was read to him, and he was consulted in relation to it bef re it was ever engrossed. We have every reason to expect that our important witnesses will be here to-night.

Senator DUNN. I wish to offer the following resolution:

Resolved, That the Court will not delay the trial further, to send for rebutting testimony, either on the part of the prosecution or the defence.

Mr. President, I offer this resolution with a view of ascertaining the sense of the Senate upon the proposition that has been made by the counsel for the Managers on the part of the Assembly, and with a view of enabling each Senator to present his views on this question. In any view that can be taken of it I think it would be unwise and improper, to delay this proceeding at this stage for the purpose of sending for any description of testimony. It is usual in Courts, civil or criminal, after a cause has been commenced, to progress with it, without permiting any delay to intervene. In this case, however, a latitude has been allowed to both sides. No very rigid rule has been enforced. The object has seemed to be, to give each party an opportunity to produce every fact that would elucidate the charges, or excuse the conduct alleged. This indulgence has been carried to a very great length. It will be recollected that this case originated early last sesion; that there was a committee appointed to examine and report whether there was sufficient evidence upon which to base charges of impeachment, against the respondent; that this committee reported, and that the report was dissected in the Assembly; that articles of impeachment were preferred to this Senate, the Court contemplated in the Constitution for the trial of impeachment, and that then for the purpose of enabling the Assembly, by its Managers and counsel, to prepare duly for the investigation, it was insisted that a recess should take place, of sufficient intervening time, to enable the prosecution to summon and procure the attendance of all the witnesses, whom they deemed material to support the various articles in the impeachment, and the various specifications under each article. It was also insisted that it would be a measure of justice and convenience to the respondent, to delay the trial, or investigation, until he should have an opportunity, properly to respond to, and prepare himself with witnesses to explain his conduct. Two months were allowed for this purpose.—Each party was put upon his guard, and assured of what would be expected of him—that is, he should be duly prepared to make his defence. I apprehend it cannot be imagined by any one, that this time has not been sufficient for all the ends of justice, to both parties concerned in this impeachment. I apprehend it will not be insinuated, even, that the Managers were not well apprised of the ground that they had assumed, in these articles of impeachment, and that it was necessary that they should be supported by proofs satisfactory to the minds of the Court. It will not be insinuated that they did not know all the witnesses that would appear, to testify to the various articles and specifications. Nor can it be presumed or imagined for a moment, that the respondent was not aware what devolved upon him to do, to meet those charges. They have each had two months to make these preparations; and in addition to that, it will be recollected that at the first week, there was a delay on this very account. Then the Court indulged the parties, and it was a week before the trial was taken up, in order that the witnesses might have time to arrive.—The Court enforced no rigid rule, has enforced none so far; and now we are at the conclusion, so far as the testimony is concerned, but then comes up a proposition to grant some delay to procure certain witnesses, to rebut some testimony, drawn out of the witnesses on the part of the respondent. Now, Mr. President, we intend to say nothing about the merits,

or materiality of the testimony, which the Managers seek to introduce here. I think on that account, there is no sufficient reason in the law, for delaying the trial; and even if it were material in any essential point, I do not think it could be asked of this Court, to delay the trial any longer. It certainly cannot be complained to the public, that they have not had an opportunity to make out all these charges, nor on behalf of the respondent to make out a defence. I do not feel disposed to enforce a rigid rule, to defeat private or public rights; but I say there can be no complaint, from no quarter, against the Court. I think the public interest requires that this trial should proceed now to its final conclusion, and that it would not be gratifying to the public, that we should postpone it farther for the accomodation of either side.

Senator WAKELY. I would simply enquire if it would be satisfactory to the Managers to limit the delay till to-morrow morning, and if then they could proceed with the examination of the case.

Mr. RYAN. In regard to the testimony which we have, we propose to give it now. In regard to the witnesses who are absent, as I have already stated on behalf of the Managers, we expect them here this evening, and on that statement we submitted the whole matter to the court. We have neither asked the court to delay nor to go on. We stated precisely how we were situated, and asked the court to proceed as they deemed best, under the circumstances. In regard to the enquiry last put by the honorable Senator, (Wakely,) we suppose that as long a delay as we should want. We assume that our witnesses will be here to-night.

Senator WAKELY. I move an amendment to the resolution offered by Senator Dunn—that the Senate will proceed with the case as far as they can to-day, and then preceed to-morrow morning.

Senator DUNN. The Resolution is simply a resolution to express the sense of the court. The delay, if any proves to be necessary, can be had by an arrangement at the hour of adjournment. It is only to fix the principle that I introduced the resolution. If it is adopted the court will proceed as far as they can to do, and if they see fit, adjourn over till to-morrow morning.

The resolution was adopted—Ayes 16; Noes 8.

Adjourned, till 3 p. m.

AFTERNOON SESSION.

Mr. RYAN. The Managers offer the record of the indictment in the case of the United States against Wm. S. Hungerford.

Mr. RYAN now read the motion to quash the indictment.

LAFAYETTE TOWSLEY was sworn and examined on the part of the prosecution.

Q. Are you clerk of the Circuit Court of Ozaukee county.

A. I suppose I am.

Q. Have you the record in the case pending in that court, brought by the Attorney General, against the Wisconsin Marine and Fire Insurance Company.

A. I have the records of Washington County. I have no transcript, but I have the docket itself (the witness produced the papers referred to.)

The WITNESS. The bill was filed on the 3d day of April. I suffered the bill to be taken from the file by the plaintiff himself; and on the day it was marked,

he filed the precipe. There was a hearing before the Judge, but I was not present. There was some discussion, I do not know what it was; but there was no court.

Cross Examination.—Do you remember what day of April it came on in 1851.

A. I cannot tell. There was a special term of the court on the first or second Monday of June of that year, for a chancery term; and I think the Judge remarked that he had received a notice that it would not be expedient to proceed on the trial, and made some remarks about the case being discontinued. I think I remarked that I had received a note from the Attorney General to that effect, also. I told Judge Larrabee and he directed me not to file the order of the Attorney General, and it was not filed till after having a conversation with the present Attorney General. The cause is still pending there, as far as the order of the Judge was concerned.

Mr. RYAN. Mr. Kellogg, clerk of the Supreme Court, has discovered the portion of the record in the Kane case that has been missing. He has been sent for, but he is not in the Capitol. When he comes and that record is read we shall be in the position in which we this morning announced we should be.

Mr. KNOWLTON. With a view of seeing him, and as the record in the case of the United States against Hungerford is now before the Court, I propose to submit, in writing, the admission of Judge Hubbell in that matter. I assumed the other day to admit the substance of it. The respondent is desirous that nothing in regard to that should be kept in the dark, and he has put upon paper what I now offer to the Court.

(Mr. Knowlton, of counsel for Respondent, then read the following admission of Respondent to Article 4, Specification 2.)

The Respondent admits, that after the argument upon the motion to quash the indictment against Hungerford, in the District Court of the United States, sitting at Madison, and whilst the Supreme Court of the State was in session, and when it was supposed that there would be another argument in the U. S. Court, sitting at Milwaukee, Mr. Knowlton spoke with me in regard to the points raised on the motion to quash, and *desired*, as I thought, my opinion as to the soundness of the legal positions assumed. I told him that I was an attorney and counsellor in that Court, and if my opinion was wanted I must be paid for it. He then replied in substance, that he was glad to hear it, as he thought Mr. Hungerford would like to have my services in Milwaukee. He, Mr. Hungerford, or one of them, again saw me, and I told him or them, I would examine the case and give my opinion on the points for fifty dollars, or would engage to assist in the argument for one hundred dollars.—This was agreed upon between us. I then conferred with Mr. Knowlton (as I think) further on the points, before I left Madison. And afterwards, during the vacation, I had a conversation with Mr. E. G. Ryan, at Milwaukee, and as I recollect, just prior to the sitting of the Court, when it was supposed that the matter of the motion would be brought before the Court.

Judge Miller, of his own motion as I understood, quashed the indictment, or advised a *nol. pros.* So the matter ended, and I did nothing further in the matter. This is all that I ever did, or engaged to do, in the matter. And further, Mr. Hungerford paid me as agreed, by certificate of deposite on some Bank at St. Louis, and he never paid me more, or agreed to pay me anything more, for any cause, purpose, or thing whatsoever.

LEVI HUBBELL.

Mr. LAFAYETTE KELLOGG, was recalled by the prosecution.

Q. Have you found any of the papers taken in the last appeal of Howe against Kane? A. Some of them.

Q. Where are the balance of your papers?

A. They are not in my office, I do not know but they are in the hands of one of the Judges. I do not know how I missed these. I came across them the other day accidentally, in the same place I had looked for them recently. I suppose I must have overlooked them.

The papers were here discussed in a brief conversation between counsel of the parties, and all that was expected to be proved by them on the part of the prosecution was admitted by the Respondent

Senator DUNN. I am informed that subpoenas have been dispatched for witnesses, and they are expected to appear on the part of the managers this evening or to-morrow morning. Under this state of facts, I am willing to give time for their appearance. I now move that the Court adjourn till 9 o'clock to-morrow morning.

The motion was carried.

TWENTY-THIRD DAY.

SATURDAY, July 2.

MORNING SESSION.

JONATHAN TAYLOR was recalled and examined upon Specification 1, Article 2.

Mr. SANDERS. Mr. President, we have called this witness to examine him in connection with the assignment of his judgment to Levi Blossom. We had that assignment retained by the Court, expressly because we could not use a copy. It was left with Mr. Arnold, at the time of Mr. Blossom's examination, and he put it in his pocket. He has now gone temporarily to Milwaukee, and it seems has taken the assignment with him. I presume he took it unintentionally and accidentally, but it places us in rather a bad position, because we cannot examine this witness unless we have the original paper. We wish to examine him, as to the signature, and particularly as to the date of the instrument. We have not the date of it, and we are something at a loss to know what to do.

Senator DUNN. I understood that paper was to be in possession of the Court, through its clerk.

The CLERK. It never was handed to me at all.

Mr. KNOWLTON. It was left by consent with Mr. Arnold, and he has inadvertently taken it away. The defence would make any admission that was possible, to enable the Managers to proceed.

Senator STEWART. Mr. President, that paper has been read before the Court, and is before it as evidence. I understand that it is not forgery, that is in question, but that Henry P. Hubbell, the subscribing witness, was not present at the time it was signed, and not present as a witness. I do not see why the Managers cannot go on and examine Mr. Taylor in reference to that.

Mr. SANDERS. The Managers have no objection to examine Mr. Taylor, so far as they can.

Q. Mr. Taylor, how long was it after you received Judge Hubbell's l etter,

dated January 3, 1851, intended to be dated 1852, that you executed the assignment to Henry P. Hubbell?

A. It was the next morning.

Q. Do you remember the day of the month you received the letter.

A. I was under the impression that I received it on the 4th, 5th, or 6th of January.

Q. Who drafted that assignment to Henry P. Hubbell?

A. Henry P. Hubbell drew it.

Q. Who was present when you executed that assignment to Henry P. Hubbell?

A. I cannot say. It appears there was some young man in the office, but I do not recollect who. He was a person whom I was not acquainted with. I do not know but it might have been Robert Chandler.

Q. How many days was that before Judge Hubbell returned from Madison, where he had been holding Court?

A. I am under the impression it was about a week, but it might not have been so long.

Q. Where did you first meet Judge Hubbell after his return?

A. At his office.

Q. Was that the time you executed the assignment to Levi Blossom?

A. Yes, sir.

Q. Repeat the conversation you had with Judge Hubbell on that occasion?

A. Well, we had quite a lengthy conversation. I went into talk with him, in reference to getting out an injunction to serve upon the city treasury. He asked me if I thought there were any funds in the treasury. I told him I was under the impression that there were. He said it would take some little time to get out a writ of injunction.

Mr. KNOWLTON. Is this the evidence which you spoke of wishing to get from this witness?

Mr. SANDERS. The counsel must perceive that we should have some latitude in the examination, since we have not the paper to guide us?

Mr. KNOWLTON. It seems to me you could come at what you wish, with reference to the assignment, without going all over the evidence again. We have got that already before the Court. I object to that kind of questioning being propounded to this witness. It is not pertinent at this time, for various reasons. It is quite obvious that this is entire new matter, or else this witness has been interrogated in relation to it, when he was upon the stand before; and it will be recollected that we have not introduced any testimony, to show that he is incorrect in statements made with reference to any conversation had with Judge Hubbell, or any body else. Then it is quite obvious that it is not rebutting testimony. If the witness did not testify to all this in his examination upon the stand before, then it is entirely new matter, and they are undertaking to establish some facts, which they did try to establish before. They have rested their case, and we have proved independent facts. We submit these facts to the consideration of the Court, and as a matter of course demand the judgment of the Court, to say whether they were not divested of anything that savored of corruption, or even of impropriety. Now, they bring a witness upon the stand, to repeat his testimony all over again. What has that to do with any testimony we have introduced. They announced to the Court day

before yesterday, that with the exception of two matters, their case was closed. They wished to introduce rebutting testimony, as to the assignment to Blossom, and the other matter was in relation to, whether Kane had seen his answer, in the Parsons & Lawrence case, before it was brought to him by Cogswell. That was all they said they wished to prove, and now they are going on and examining this witness in relation to entirely new matter, or else they are examining him again upon subjects upon which he has been already examined. Now, if this is new matter, after an announcement of that kind, I ask what condition does it place us in, if the Court will permit that sort of examination. It may go on to any extent; but I ask how we are to be prepared to meet any testimony that we are now called upon to meet. This Court will not wait for us to send for other witnesses. It is a new idea to me, that the Court will wait for testimony. It is a rule in most Courts, that parties must be ready when a case comes on for trial; and if they are not ready, they must postpone the case. It may be good ground for a new trial, if, after the testimony has closed on one side, new testimony is introduced by the other, that they were not apprised of before. It occurs to me that they cannot be asking this witness upon new facts, and it is not rebutting testimony. No man can claim that this kind of examination is rebutting testimony.

Mr. Sanders. I lay but little claim to legal attainments myself. I make no pretensions to them. The fault of that paper not being here is certainly not ours. We called for the paper, and it was intimated by at least one member of the court, that documentary evidence in possession of the court was to be placed with the clerk, the proper depository for the use of the parties and the court. At the time the suggestion came from the member of the court, Mr. Ryan had the proposition drawn to have that paper left with court. Now we do not claim here, that that paper was taken away for the purpose of depriving us of the use of it; but whether purposely or innocently, the effect is the same upon us. It places us in the same position as if the gentleman had pocketed that paper, and taken it off intentionally beyond our reach. Now what course are we to take? I intimated to the court that inasmuch as it had been taken beyond our reach, it would be necessary to compel the respondent to produce that paper for the use of the parties. The members of the court know that we cannot examine this witness as to the execution of that paper without the witness having the paper to look at, to examine the date, and to examine the body of the instrument. That is a sufficient reason of itself, why we pursue this course. But there are other reasons why this is legal and proper. They call Mr. Blossom to prove that this was a bona fide transaction between Levi Hubbell and Levi Blossom, and that the respondent had no interest in the judgment. The actions of the respondent are part of the *res gesta*. It is perfectly proper and perfectly pertinent to prove them. They called Mr. Blossom for the purpose of showing that Levi Hubbell had no interest in that judgment at the time of the filing of the creditor's bill. Will the gentleman pretend here, that it is not proper to give the declarations of Judge Hubbell, for the purpose of rebutting that presumption? It seems to me, a very clear position that we are entitled to that evidence, upon that ground alone. Then again, the counsel stated, that when we rested, we said we wanted to call one or two more witnesses to testify to one or two important facts, and therefore, we are not entitled to introduce any evidence in rebuttal, although without that statement it would have been perfectly proper.

Now, the statement was this, that in one or two particulars we wished to introduce witnesses to points that we deemed proper; but we said we had other testimony, which if it was here, we desired to use, but stated that it was not of sufficient importance to delay the court to get it, though we should not have asked it, if the paper had been in court.

Mr KNOWLTON. The gentleman opposed, says that he lays no claims to being an able lawyer. That, certainly, is a very modest manner of informing this court that he has some pretensions in that way. I know very well that he is a good lawyer.—There is no use of being modest about these things. There is no use in a man's saying he has no pretensions to a thing to which we all know he does make pretensions. I do not wish to be that modest myself. Now, it is unnecessary that we should discuss in any way the why or wherefore that this paper is gone. It is unnecessary to discuss why it is that the transaction between Judge Hubbell and the witness upon the stand was made for one purpose or another. That is not now to be discussed. I am not mistaken when I say that they said they wished to call witnesses to only two points, with the exception of some record evidence, because a member of the court required him to state what they expected to prove, and they stated that they expected to prove by Mr. Taylor that that assignment was not subscribed by Henry P. Hubbell, as a witness, at the time it was executed. In reference to all that transaction, they closed their case, and I say, without the fear of contradiction too, that that is what they did say; and it will be remembered that I suggested upon that occasion, that it was quite immaterial whether they established that state of the case or not. Now, the gentleman asks if it is not proper for us to show that that was a bona fide transaction between Judge Hubbell and Levi Blossom; and then wishes to know if it is not competent to prove that that was not for him to prove, that that was not a bona fide transaction. I say that if they wish now to examine this witness to show that Levi Blossom was not the owner, absolutely, of that judgment, then, I say, they may go on and prove that; but has this testimony anything to do with drawing that out? Most certainly it has not. Suppose Henry P. Hubbell was merely trustee in that transaction. I ask if it is possible to be admitted by him to be in the hand writing of Judge Hubbell. I ask if it is possible to state that when that judgment passed from Judge Hubbell, he had any interest that he could set up against Levi Blossom. No, sir, the gentleman will not pretend it. Levi Blossom testifies that he did not have a conversation with Judge Hubbell on that subject at all, that he had nothing to do with him. I say that is what the proof now shows before this court, and if they can show that Levi Blossom is mistaken, they may show it. I am not disposed to be captious, neither am I disposed to sit here and see gentlemen make mountains out of mole hills. It is entirely unnecessary for us to sit here and see them introduce new matter without objecting. They are entitled, unquestionably, to rebut the testimony we have introduced, and if they can do away with it, they are unquestionably able to do it without this kind of examination of the witness. This case may never end, if it is to go on in this way.

The question, as follows, was now submitted to the vote of the Court:

"What did Judge Hubbell say to you in relation to issuing an injunction, and in whose names the bill should be filed?"

Senator ALLEN. I was not present when the testimony in reference to this motion was introduced, and I ask to be excused from voting. (He was excused.)

The question was rejected, noes 20, ayes 3.

Mr. KNOWLTON. I will now state that I regret exceedingly. that Mr. Arnold should have been so forgetful as to take this paper with him, but Mr. Arnold will be back to-night or on Monday, and we will consent that Mr. Taylor may be examined on the stand, at that time as well as at present. We will consent to that.

Mr. SANDERS. Mr. Taylor, you say you executed that assignment to Levi Blossom that was drawn by Judge Hubbell? A. Yes, sir.

Q. When was that assignment drawn?

A. It was drawn on Tuesday; I cannot tell the day of the month, I recollect that, because on Thursday it was referred to the Common Council. I do not know who referred it.

Q. Who was present when that assignment was executed?

A. There was no person present.

Q. Did you see that assignment after it was executed?

A. I never saw it subsequent to that time.

Q. Was there no name attached to the paper as attesting witness?

A. There was not.

Q. Did you ever acknowledge the execution of it to Henry P. Hubbell, for the purpose of having him put his name to it?

A. I never spoke to him about it in the world.

Q. Did you know it was passing into his hands and through him to Levi Blossom?

A. I did not know anything about it.

Cross Examination.—Q. Did you ever execute more than one assignment of that judgement against the city of Milwaukee to Levi Blossom?

A. No, sir.

Q. When was that assignment by you to Levi Blossom executed?

A. In Judge Hubbell's office—in his rooms at the States.

Q. Was that the evening of the day when Judge Hubbell purchased that judgment of you?

A. It was the forenoon of the same day.

Q. Was it all one transaction?

A. It was. He bought the judgment of me, I made the assignment, he gave me the check and note all at the same time. The check was $100. The amount of the note was $700. I do not recollect the date of the note or of the check. I recollect the note was payable on the 9th of February, some two or three weeks after the note was drawn.

Q. Were they dated on the day they were drawn?

A. The check was dated one day ahead of the day it was drawn. I do not recollect how the note was dated.

Q. Was the check dated ahead, or was it made payable at sight?

A. No, it was dated ahead.

Q. You say you had previously executed an assignment of that same judgment to Henry P. Hubbell?

A. Yes, sir, that was in Henry P. Hubbell's office.

Q. Did you say that Henry P. Hubbell was not present at the time of the assignment to Levi Blossom? A. I did sir, he was not present.

Q. Where was the assignment previous to the assignment to Levi Blossom?

A. Henry P. Hubbell had it.

Q. Do you not know, Mr. Taylor, that the assignment to Levi Blossom was an exact copy of the one to Henry P. Hubbell? A. I do not, sir.

Q. If it should turn out that one was a copy of the other, what would you say to that?

A. I know it was not a copy of the other.

Q. Was not the date the same as the other? A. That I cannot tell you.

Judge HUBBELL. Your recollection and mine differ.

A. You do not frighten me by that.

Q. Do you swear that the assignment to Levi Blossom was not a copy of the one made to Henry P. Hubbell? A. I do.

Q. You have sworn that you saw me draw the assignment to Levi Blossom?

A. I have. You sat at your desk and drew that assignment, and there was no person in the room but you and I. After you drew it I signed it, and you then gave me the note and check.

Q. Then you say you know that that assignment was not a copy of the assignment given to Henry P. Hubbell. A. I do.

Mr. RYAN. The witness has stated that to his knowledge the assignment to Henry P. Hubbell was not there, and the consequence follows from that, that one could not be copied from the other; that is to say, was not composed of the same records.

Witness. He told me he would get the assignment of Henry P. Hubbell and hand it to me.

Q. How do you know that I did not have the assignment before me.

A. How do I know anything about it?

Q. I say you stated here that you knew it was not copied. I want to know whether you will repeat that or not?

A. I will state now that you might have had it then, and copied it, but you told me it was not there.

Q. Do you know—(Interrupted by the witness sharply.) I don't know anything about it.

Judge HUBBELL. Well, I guess you don't.

Mr. SANDERS. Did Mr. Blossom ever call upon you, in relation to that judgment. A. He never did.

Q. I wish, Mr. Taylor, you would look at those two chattel mortgages. Were those mortgages executed by you? A. Yes, sir, they were.

Q. What was the consideration?

A. There was'nt any. In that year, Mr. Locke failed, and I gave Judge Hubbell these mortgages and several others. Judge Hubbell sent me to Henry P. Hubbell, to give him the chattel mortgages after he himself was elected Judge.

Cross Examination.—Q. Did you give Henry P. Hubbell any chattel mortgages. A. Yes, sir.

Q. Specify them, will you. A. I gave him one.

Judge HUBBELL. Be careful what you recollect.

A. Oh! don't charge me, I know what I'm about.

Judge HUBBELL. I know what your about, too.

A. I gave him one on a piano-forte.

Q. What was the nominal amount of the debt secured.

A. I don't recollect the nominal amount, there was no real debt at all. That

was in 1849. There were two or three given, I think Robt. Chandler was witness to one—the first one I gave.

Q. When did you give them to Henry P. Hubbell?

A. It was in the latter part of 1849, shortly after Levi Hubbell was elected Judge. It might have been in 1850.

Q. Were those mortgages given to cover up the property? A. They were.

Q. They were put on file, were they not?

A. I gave them to him and thought he put them on file. I never looked.

Q. Do you not know the fact, that there was never a mortgage on the files of Milwaukee county?

A. I do not know whether there was or not.

Q. Have not you again and again been to look for the files?

A. I never was there to notice them.

Q. Did you not take one of these mortgages off the file to show to Mr. Emmons?

A. I might, but I don't recollect it. I do not think I ever showed him these papers at all. I have got at my house a judgment in that old City matter, and that was shown him.

Q. Did you say you never showed this to Mr. Emmons?

A. I have several times used mortgages just like it, and I think it was some of them.

(The following portion of the examination of this witness was so rapidly conducted, the question and answer often proceeding at the same time, that the reporter is able to present only a broken sketch of what was said. The fault of what follows, it is hoped, is only one of omission. Such portions of the questions and answers as could be rescued in the hurry of the examination, are put down; but nothing is given that was not heard, or understood to be heard. A public, moderate in its expectations, will not require from one hand, a verbatim report of two speakers at once.)—THE REPORTER.

Witness. Didn't I give you an estimate in 1847? Didn't you assign —— to George —— at my request?

Judge HUBBELL. I know that is the last you paid me. It was in 1846.

Witness. Did I not give you a note to collect, and did you ever give me anything of it back?

Judge HUBBELL. When did you make me your agent, to collect a payment, in your life?

Witness. At divers times, up to 1847 and 1848.

Judge HUBBELL. Name one time.

Witness. Why, there was that note of Griffith's. It was made in the fall of 1847. It was not handed to you as a payment. You advanced me $60, and you said you would collect the remainder, which I supposed you collected.

Judge HUBBELL. When did you pay me again?

Witness. I let you have that $185.

Judge HUBBELL. Did'nt you borrow $185 of me in 1846, and did'nt you hold those orders till 1850?

Witness. You handed them to me and I gave them to Jason Downer. The records of the Common Council will show.

Judge HUBBELL. Well, if they are not more accurate than your memory—

Witness. My memory is accurate enough. You ask me what I made you

a payment in. Well; I gave you those orders, and you gave me $40 in money. That was in December '46, or the spring of '47.

Judge HUBBELL. Did you get two letters from me, from Madison?

Witness. Yes, sir, three of them.

Judge HUBBELL. You wrote me first, did'nt you, at the time you wanted to know about the judgment?

Witness. I certainly wrote you about it.

Judge HUBBELL. I ask you what old claim I referred to.

Witness. I have no idea what you meant by it, further than that you thought I ought to pay something for your services in getting the judgment.

Judge HUBBELL. (This remark was wholly lost.)

Witness. Why, Judge Hubbell, you recollect perfectly well the conversation when we talked this matter all over. I cannot tell what you meant by your old claim. I suppose now, you meant those orders.

Judge HUBBELL. There is a bill filed in the United States Court to make me pay that judgment. Have you read it?

Witness. I have not. I have not filed my answer.

Judge HUBBELL. Is your answer made?

Witness. I may have seen the bill.

Judge HUBBELL. You recollect old matters very clearly—let us see how well you can recollect new ones. Have you seen that bill?

Witness. I do not think I have seen it. I have not answered it. Mr. Randall drew up the answer, but it is not signed or sworn to.

Judge HUBBELL. Did you tell him what to draw in that answer?

Witness. I told him my story.

Judge HUBBELL. In that answer did you tell him to say you did not owe me any debt at the time the judgment was assigned, and it was assigned to me in fraud of your creditors. If you can make that fact appear, you will try to compel me to pay it over again?

Witness. All I want of you is to pay me for those orders that you got.

Judge HUBBELL. The orders I will settle with John Orton for.

Witness. I never owed you a farthing after 1848, excepting for those orders which you handed me to give to Downer, to get settled, to get orders on them —or to get settled in my name for Downer to prosecute. They were referred to the Common Council and they would not issue orders for them. They remained in that way and I gave you my note for $250, which was what I owed you, and that I paid after I gave up that judgment.

Judge HUBBELL. Who procured the arbitration and who was your attorney in that suit?

Witness. You were.

Judge HUBBELL. Who went before the Common Council?

Witness. You or Holliday, I don't recollect which.

Judge HUBBELL. Who filed the petition for a mandamus, to compel the issue of the balance of the orders?

Witness. It was either you or Holliday, I do not recollect which.

Judge HUBBELL. Who took the case and argued it?

Witness. Holliday.

Judge HUBBELL. Now wasn't that the first time Holliday appeared in that case?

Witness. I employed him about the same time that he went out as city attorney. When his time was out I employed him.

Judge HUBBELL. Did you ever pay me one cent at all, except by the assignment of the city judgment?

Witness. Yes, sir. I paid you $165.

Judge HUBBELL. You just said that was for orders.

Witness. No, I didn't say any such thing. It was in 1846 or 1847 that I paid you.

Judge HUBBELL. You did not pay me for services before they were rendered.

Mr. KNOWLTON. You say you gave two or three mortgages to Henry P. Hubbell. Have you no idea of the nominal amount for which they were given?

A. These mortgages were given to secure my property from execution.

Q. Were they ever renewed? A. I think they were.

Q. These renewals would appear on file, would they not?

A. I think they would?

Judge HUBBELL. If you say you put those renewals on file, you tell what is false.

Witness. You tell what is false yourself Judge Hubbell. You are black as hell!

Mr. SANDERS. Mr. President, it appears to me entirely improper for the Respondent to charge a witness on the stand with telling what is false in his testimony.

Judge HUBBELL. I will ask pardon of the Court. I am so astonished at the statements that are made here, that I have been betrayed into making a remark that is unbecoming the presence and dignity of this Court. I wish to withdraw it *here*—elsewhere I shall have my remedy.

Witness. Judge, you have spoke—now let me have a word to say.

Mr. RYAN. Mr. Taylor, you are a witness. It is your place to answer the questions put to you, and nothing more.

Mr. KNOWLTON. Now, who renewed these mortgages?

A. Judge Hubbell.

Q. How did he renew them?

A. By drawing new ones, if they were renewed; and I think they were once or twice; and the renewal might have been to Henry P. Hubbell instead of him.

Q. What you mean by renewal is, that one was given for another?

A. Yes, sir, it was to keep the property covered up, which would not be done if they were out.

Q. You have done considerable business in covering up your property, have you not? A. No, sir, not any great sum.

Q. Eight or ten mortgages upon your property for no consideration, is a small business in that way, is it?

A. Yes, sir, precisely, I am positive I gave two mortgages, and I think three.

Q. Had you dealings in that line with anybody else?

A. Yes, I had with the Comstocks, by changing hands.

Q. Was that a cunning imagination of your own, to change [illegible] fix your property in different hands.

A. You can answer that question. I can't.

Q. Will you state, whether the mortgages you gave were all on the same property?

A. They were all upon my household furniture, and horses and wagons, except this demand against the city, which I gave to Judge Hubbell and he assigned to Blossom.

Judge HUBBELL. To enable you to accommodate some New Yorker.

A. There was no enabling me about it.

Q. What was the date of the mortgage upon the piano.

A. I do not recollect, the deed was only given to you in trust.

Mr. KNOWLTON. You need not try to argue the case. We do not want you to lay awake nights, in reference to that matter.

C. E. JENKINS was called on the part of the State, sworn and examined.

Q. Do you know Jonathan Taylor. A. Yes, sir.

Q. Do you know Judge Hubbell? A. Yes, sir.

Q. Were you a party or privy to any negotiation between Judge Hubbell and Mr. Taylor, in the year 1852, in regard to the settlement of any claims between them?

Mr. KNOWLTON. I object to that question. We have nothing to do with the settlement of their difficulties in any other case.

Judge HUBBELL. I have no objection to it, myself. It relates to the order matter, and am willing it should come out.

Mr. RYAN. The offer is to prove that Taylor was not indebted to Judge Hubbell.—We propose to show facts by this witness to utterly rebut the testimony, that Taylor, in 1852, or at any time subsequent to the assignment of that judgment, was indebted to Judge Hubbell.

Mr. KNOWLTON. If we are to examine the dealings of Judge Hubbell and Mr. Taylor in all the transactions of their lives, I apprehend it will be a new kind of trial of impeachment. I am unable to discover that it has the least te tendency to elucidate the subject before the court. If I thought it would have the most remote tendency that way, I certainly would not object to it. The offer the gentleman makes, does not show that it is properly receivable, but on the contrary, shows that it is not. Now, if they prove by this witness what they propose to prove, it would not establish the fact that Mr. Taylor did not owe Judge Hubbell. What they wish to establish, really, is, that the witness they bring upon the stand, is entitled to credit. Now, he must be a miserable witness if these facts must be brought out to prove that his testimony is entitled to credit.

Judge HUBBELL. We have no objection whatever, Mr. President, that testimony should come in, if the court wish to hear it. The charge against me is, that the Judge of the 2d Judicial Circuit, in February 1852, presided in a case where he was interested. To prove that charge, evidence has been introduced to show that I bought the judgment, which was only satisfied in Chancery, from Mr. Taylor. I have never denied to any body, that I took an assignment of that judgment of Mr. Taylor, and paid him $800 for it, claiming that the balance was due me. I never denied that I was the purchaser, and it never was denied here in any way whatever, to the managers, but a side issue has now been raised, which is not an issue in the suit—whether at the time I purchased that judgment of Mr. Taylor, he did or did not owe me for past services, in order to make out that judgment was assigned without a full condition and ade-

quate consideration. No matter for that; it is not denied on my part, and it is not material for them to show anything else, than that I did become the purchaser of that judgment in 1852. The testimony of Mr. Blossom is before this court. As to what took place afterwards in reference to that judgment, whether Taylor owed me or I owed Taylor or not, at the time that was bought, I have no objection to their examining all about.—That is not at all in issue. When Mr. Taylor claimed, as has been shown here, some balance from me on account of orders, that I purchased from John Orton, matters entirely irrelevant, it has no connection with anything Taylor has stated. I only wish to show the court that it has nothing to do with this case.

Senator BLAIR asked for an explanation about the mortgages.

Mr. RYAN. When these mortgages were introduced, the gentleman stated that they were introduced to show an indebtedness of Taylor to Judge Hubbell.

Mr. KNOWLTON. That evidence was introduced for the purpose of rebutting the testimony of Mr. Taylor. He stated that he owed Judge Hubbell nothing at the time of that assignment. He offered the mortgages to show an indebtedness at that time; therefore it went to discredit the testimony of that witness. I object to the testimony sought to be obtained from this witness, on my own account. Judge Hubbell is perfectly willing it should come out; but I object, because if we are to investigate questions of this kind, we may never get through this case.

The question was now submitted to the Court, as follows:

"Were you a party, or privy to any negotiation in 1852, between Judge Hubbell and Jonathan Taylor, in regard to their mutual dealing and indebtedness?"

Ayes, 12; noes, 12. There being a tie, the President gave his casting vote in the affirmative, so the question was allowed.

A. Yes, sir. I was privy to some negotiations.

Q. Will you state then, so far as your own knowledge extends, what it was?

A. Part of it was in writing. Mr. Taylor stated to me his case, and I wrote to Judge Hubbell, stating to him as nearly as I recollect it, that Mr. Taylor had stated some facts to me, on account of which, if true, the Judge was indebted to Taylor. Taylor had threatened some legal proceedings against the Judge. I said I would write to Judge Hubbell, and perhaps the Judge would settle the indebtedness. I did write, and Judge Hubbell replied, declining to settle, stating that he owed Mr. Taylor nothing, and that he could not be coerced by any threats, into any such a settlement. He said he had been Taylor's friend, and was still inclined to be, and endorsed a note to be given to Mr. Taylor on certain conditions. The first thing I did with it, was to offer it to Mr. Taylor, asking him to comply with the conditions. He refused, and I put the note in my pocket, intending to return it to Judge Hubbell; and afterwards did so return it.

Q. Were you privy to any actual settlement between them?

A. Yes, sir, to some extent. Sometime afterwards I received another note from Judge Hubbell. (The witness here produced the letters referred to, and read as follows:)

MADISON, June 20th, '52.

My dear Sir: On reaching this place yesterday, I found a letter from Mr. Jonathan Taylor, which I have to-day answered to him. This morning I re-

ceived your letter, relating to the same subject as his. I am sorry he has threatened coercive measures, to compel me to do what he claims. I have no property of his, and owe him no debt. I did purchase some City orders of Jno. J. Orton, and did it by his knowledge and consent, but without any promise or agreement whatever that I would do it for him, or that he should have any interest, direct or indirect in them. Still, I have been his friend for many years, and he has been mine; and I do not desire or intend to speculate out of his misfortunes, unless he forces me, by legal proceedings, to stand on my legal right.

He asked of me to accept a draft, which I could not do, but I am willing to endorse a note to assist him; and I have sent him one (or rather,) I enclose one herein for his use, in case he desists from legal proceedings, and not otherwise. Please hand it to him, and let him sign it in your presence, in case he admits that he has no legal or equitable claim on me; otherwise please retain it for me, and let him proceed as he thinks most to his advantage. I have no desire to coerce him, as to the course he shall pursue.

In haste, very respectfully yours,

LEVI HUBBELL.

CHAS. E. JENKINS, Esq.

Dear Sir: Mr. Taylor and I have arranged our affairs; and you will please hold the note I sent you, (for $275,) or hand it to me. I shall be glad to have a call from you.

Truly yours,

LEVI HUBBELL.

CHAS. E. JENKINS, Esq. July 6, 1852.

Mr. RYAN. What was the shape of the note, mentioned in the first letter?

A. It was a promissory note, so drawn that it would be Jonathan Taylor's note, endorsed by Judge Hubbell.

Q. What further knowledge have you of the settlement between them?

A. About the time I received that last note, Taylor informed me that he had settled with Judge Hubbell.

Q. Have you any personal knowledge of that settlement?

A. I have it only from statements made to me by Mr. Taylor and Judge Hubbell. Judge Hubbell said, he and Taylor had settled that affair concerning which I had written to him; and that he was to pay a note for $175, which he had given to Mr. Taylor, and which I had in my possession, for the purpose of negotiating it with Taylor. I went to him for the purpose of knowing whether he was to pay it. Judge Hubbell said he would take care of it. I endorsed it, and have never heard of the note since. I think Judge Hubbell stated also, that he had paid him $100, besides giving him that note.

Q. Did you know the late Charles Crane?

A. Yes, sir. He was a lawyer.

Q. Where was his office in 1847?

A. I knew of his having an office somewhere, but I cannot state where, nor at what time.

Mr. SANDERS. I am now instructed to say, that the subpoena for the other witness, whom we expected, has not been returned. We do not deem his testimony of sufficient importance to ask for delay, and we now close the testimony on the part of the prosecution.

Judge HUBBELL. We have one simple fact to prove—that I was here in Madison on the 14th of January, 1852. Mr. Vilas knows the fact. If you admit it, that will do; otherwise we must call Judge Vilas to prove it.

Senator STEWART. I will state here in my place, that I know he was here at that date.

Senator MILLER. I also am knowing to that same fact.

Mr. RYAN. That is sufficient.

Mr. SANDERS. Mr. President, we now rest our case, with the exception of retainiug the privilege granted us by the counsel opposed, of examining Mr. Taylor, when Mr. Arnold arrives, as to the papers he has in his posession.

Mr. KNOWLTON. I have practised law for several years, and I never stand upon trifles. I now state what I did not before state, that when Mr. Arnold comes he shall have the privilege of calling Mr. Taylor upon the stand, and examining him again.

Mr. KNOWLTON. As this case has taken some time, and as we are conscious that every member of this Court feels a disposition, as by the Constitution it is bound to, to acquit Judge Hubbell, unless they are satisfied beyond a reasonable doubt, that he has been guilty of "corrupt conduct in office," or of some "crime and misdemeanor," in the language of the Constitution, whatever may be its language in other cases—and as we think the testimony now before the Court, shows an entire absence of anything which borders on corrupt conduct or crime, whatever the Court may think in relation to some acts, which may amount to indiscretion, we are willing, upon our part, for the purpose of bringing this matter to a speedy close, to submit the case to the consideration of this Court without argument.

At the same time, as this is a very important case, and as it may be thought that we wish to treat it too lightly, I wish to state here that I am prepared and ready to confer with the managers, during the recess, on the subject of how we will submit the case,—whether without argument, or upon argument—and howm any arguments shall be made upon either side. I say I am prepared to confer with the committee on this subject, and dispose of it in a proper manner. We are willing now, to submit it; but I do not, as I said, wish to be understood as conveying any impression that we wish to treat the case with lightness, as has been represented by the prosecution. We wish to treat it fairly, and meet it so. I would state further that if the court is desirous that this case should be argued, we stand ready to argue it. I do not wish to say that we would agree to submit it without consulting the wishes of the court upon the subject, or the wishes of any member of it.

Mr. SANDERS. Mr. President; Firstly, we could neither go on with the argument, nor consent to submit this case, without the production of that assignment. We claim now, and shall claim, that the assignment bears evidence of fraud, on the face of it. That assignment has not been inspected by the court at all. That would be an objection to the submission of the case now.

Annother reason why we cannot now assent to the propositian of the Hon. Counsel is, that we are sent here on the part of the Assembly to present this case, and we would not like to take the responsibility of submitting it without argument, especially after some legal positions assumed by the defence, without the concurrence of the Assembly. Before we could enter into such stipulation, as a matter of duty, we should feel obliged to lay the subject before the Assem-

bly, and let the House take the responsibility if it pleases, which we will do at the earliest possible period.

It is suggested by the managers, that we can do that probably so as to place it before the court, and give our answer at the opening of the court this afternoon, or on Monday morning—this afternoon, however, I presume.

Adjourned, till 3 p. m.

AFTERNOON SESSION.

Mr. SANDERS. Mr. President: During the recess of the court, the managers have upon consultation, concluded that they could not with propriety, submit this case without argument; but with a view to economize time, as much as possible, they had a consultation with the respondent's counsel, and it has been agreed between the managers and the counsel, that the managers will waive the opening of the summing up.—They do this for the reason that the case has been fully opened on the part of the prosecution as to the evidence and charges. For this reason, we have waived the opening. The respondent and his counsel will submit his argument or arguments and then on the part of the Assembly, the managers will close the case by their argument or arguments.

I do not know whether it is proper on the part of the managers, to submit a proposition that the Court may take some action in relation to the records that have become testimony in this case, and have them placed within the reach of the managers and the counsel for the respondent, for the purpose of being used during the argument.

Mr. BARBER. We wish to have them in the equitable and actual possession of the Court, so that they may be gotten at readily during the argument.

Mr. CARY submitted the following for the adoption of the Court:

"*Ordered*, That all records now in evidence in this Court, be deposited with the Clerk of the Senate, and that they remain in his custody until the close of the trial."

Which was unanimously adopted.

Mr. KNOWLTON. At the request of one of the clerks of the Courts, (Mr. Keenan) and one I believe, who has the greatest number of records here, I would enquire if the clerk here will be responsible for their safe keeping. They are records of very important cases, and the clerks of the Courts are responsible for them.

Senator BLAIR. I cannot conceive that a clerk would be liable on his bond if any of the papers should be lost. The fact that they were taken by this Court would be a legal defence in an action against him if they should be lost. I however do not anticipate anything of the kind. They will no doubt be safe in the hands of the clerk of this Court.

Mr. KNOWLTON. I only wish to have the clerk assured of the safety of the records. I must say, however, that no clerk of any Court has a right to let a record go out of his office, and he should put his negative against any such request. He can give transcripts, but not original papers. The clerk so understands the rule also. I may be mistaken, and he may, I only explain the matter as I have done at the request of the clerk.

Senator DUNN. I suppose it is no longer a question to be settled by this Court, as to whether a clerk is bound to transfer his papers from one part of the State

to another. As I understand the matter, they were voluntarily brought here. Now, however, they are in possession of the Court, and the Court in duty to itself, is bound to retain these papers till the conclusion. So far as our clerk is concerned, I suppose the Court will endorse his responsibility. I apprehend there can be no difficulty in a question of this kind, nor that the papers will be as safe here, as in the hands that brought them, and that they will be returned to them when they have performed their office here.—They are now in Court as a matter of evidence and cannot be withdrawn.

Mr. KNOWLTON. As the Managers have waived an opening, as a matter of course it devolves upon us to open this arugment.—I await the direction of this Court, as to whether or not, I must proceed this afternoon. I will suggest that it will probably save time, if I were allowed some time to arrange the evidence upon the specifications and articles, in order. Every member of the Court is aware that the evidence has not been introduced in order. It will be some considerable labor, to arrange it succinctly. If the Court, however, desire that I should go on, I will do so.

Adjourned till Monday morning, at 9 o'clock.

TWENTY-FOURTH DAY.

MONDAY, July 4.

MORNING SESSION.

The Court opened this morning with the usual formalities. The parties were all present, but several members of the Court were absent. Several motions to adjourn were made and debated at some length.

Senator SMITH offered a resolution limiting the Counsel on each side to two days in their argument.

Senator WAKELY. I do not know but it may be desirable to fix some limit tothe argument of counsel, but I doubt the expediency of it. Every one having experience in making arguments before a Court, wishes to have such time as suits his own idea of the arrangement of his argument. We have no reason to think that Counsel on either side in this case desire to consume any more time than is absolutely necessary for properly presenting their arguments, and I think it is better to leave them to their own decision. If there was any imperative necessity for abridging or limiting the time, I should be willing to vote for it.

Senator SMITH. The Senate have just passed a resolution to adjourn on Monday morning next. It is necessary to pass some rule in this respect in order to finish up the Legislative business before that date. I presume that is all the time the gentlemen would require.

Senator BASHFORD. I move to insert "nine hours," wherever "two days" occurs in the resolution. Both amendment and resolution were then voted upon, and lost. More motions to adjourn were offered, amended, debated, voted upon, and lost.

Senator CARY. As we are spending our time here to no particular purpose, I move that all rules be supended, and that the clerk read the Declaration of Independence. Not adopted.

A motion now prevailed to adjourn till to-morrow morning, at 9 o'clock.

TWENFY-FITTH DAY.

TUESDAY, July 5.

MORNING SESSION.

Mr. KNOWLTON. Mr. President, with a view of disposing of this case, in as short a time as possible, I have endeavored to ascertain what particular charges and specifications the Managers would contend had been sustained by proof; and although I have not been enabled to get the opinion of the Managers, Mr. Ryan has kindly checked the articles and specifications, which he thinks have been maintained by proof. I wish to merely enumerate them, and obtain a declaration from the committee of Managers whether they think they have been maintained by proof, and whether they will so maintain in their arguments. I do this for the purpose of saving time; because if there are any of them which they will abandon, it will so far abridge our arguments upon them.

Mr. KNOWLTON then named all the charges and specifications except the following, which were abandoned as not proved:

Article 4, Specification 4. Article 5, Specification 3. Article 8, Specifications 2 and 3. Article 9, Specification 5. Article 10, Specifications 1, 4, 5, 6, 7, 11 and 19. Article 11, Specifications 2 and 8.

Mr. KNOWLTON. I wish to ascertain from the committee of managers whether they will insist, that either of the charges and specifications I have mentioned have been sustained by the proof.

Mr. SANDERS. Mr. President, the Managers will in the argument of this case insist that the charges and specifications which have been read by the Counsel for the Respondent, have been sustained by proof in this cause.

Mr. KNOWLTON. Mr. President, I will now enquire whether the Court is ready to hear us in the argument.

The PRESIDENT. As far as the Chair is informed, the Court is ready to hear the argument.

ARGUMENT OF JAMES H. KNOWLTON, Esq.

Mr. PRESIDENT: I approach the discussion of this case, duly sensible of the importance of a trial of this kind. I would gladly have avoided an argument, believing as I sincerely do, and have, from the time the testimony was closed, that the prosecution have most signally failed to sustain any single charge or specification. However, the Hon. Managers have concluded that they could not submit this case without argument, as we proposed to do; but have determined that the whole matter should be discussed at the bar of this Court.

In submitting my views upon the law and the facts, as developed by the evidence, I shall endeavor to confine myself to what I consider the correct law that should govern this particular case, and to draw such deductions from the evidence as I think we are warranted in drawing, in accordance with principles of law that are well settled. I shall not undertake to range the fields of imagination for the mere purpose of idle declamation. I shall not indulge, if I can avoid it, any vehemence of expression, but on the contrary, I shall endeavor to discuss this subject in a candid manner, hoping that I may elicit the attention of the Court, and engage, to some extent, throughout this discussion, its serious

attention, its cool deliberation, and a candid disposition of all the various matters presented for its adjudication. If this case were to be disposed of by mere declamation, by vehemence of language, or pungency of remark, I am confident that we should fail. That, however, is a task that belongs to the prosecution. It is a duty which they unquestionably conceive they owe to the public; and it is of that character which (I have no doubt) they will earnestly engage in, and eagerly pursue. I shall not undertake to amuse this Court by any oratorical flourish, nor shall I use any of its highly tinseled drapery. I shall come down to matters of fact, and of law, so far as I know and understand them; and I shall submit them to the candid consideration of this Court, with the full conviction that the positions I assume as to matters of law, and that the deductions I draw from the evidence will be spread before an enlightened public, and that a candid world will pass judgment upon them side by side, with the positions which have been, or may be assumed by the learned counsel opposed. I say I shall submit such positions of law, and draw such deductions from the evidence as I am willing to submit to this Court, and to the candid judgment of the world. The judgment to be pronounced by this Court, as well as the positions assumed by counsel on either side, will be passed upon not only by our contemporaries, but each and all will be passed upon by posterity. They will approve or discard the positions assumed, or taken upon one side or the other. I say, posterity will sustain or affirm the judgment of this Court or they will reverse it, as being, in their opinion, incorrect. Under such circumstances, no one can fail to appreciate the responsibility that rests upon the counsel, as well as upon the Court.

In the outset of this investigation, it becomes material to establish some rule of law by which this Court is to be guided. This Court has been favored with a somewhat lengthy argument, or discussion, upon the subject of impeachments in England, and in several of the States of this Union. We have had considerable reading from commentators upon the subject of impeachments, both in England and in this country; but more particularly upon impeachments in the United States. It is asserted with a boldness which never has been surpassed, and seldom equalled, by the counsel who opened this prosecution, "that there was no deriliction of duty—that there was no act of an official which was out of the strict line of duty, which was not a proper subject of impeachment." It is said by that counsel, that it is "impossible to define what was an impeachable offence; that it never was defined, and never will be." If that is the correct interpretation of the law, we are in an awful condition. If that be true, we are afloat upon a shoreless ocean, with no guide except the mere will of the impeaching court and impeaching body to settle what the law is—we are in a condition the most perilous. I assert, Mr. President, without fear, that any man will believe that I am wrong, or hot-headed upon this subject, that that position is a *heresy* in law, and I will undertake to maintain it; I will undertake to show farther from the books from which that gentleman himself has read, and which he supposes to be authority upon this subject, that the Court of impeachment is not established for the purpose of *making* law, neither is the impeaching body invested with this power, but are established for *the purpose of enforcing the law.* Who ever heard before of a law not capable of definition? I say that every law is capable of being defined, and that when it ceases

to be capable of a definition, it then ceases to be a law—the idea is a chimera of the imagination, and that too of one that is badly diseased.

It has been asserted by the counsel in opening this prosecution, that under our constitution, the Assembly, the impeaching body, settles the question as to what matter is impeachable, and that whatever they decide to be impeachable, *is impeachable;* and that it is a question that this Court cannot deal with—that it is a question over which they have no control—over which it has no power in any way, manner or form; and that all that this Court has to do, when that body has decided that a thing is impeachable, by preferring an impeachment, that the matter then comes before this body—this high court—and that it is only to pass upon the *the evidence and upon* what the Assembly has said was impeachable. If that be true, then true it is, that one branch of the legislative body in *this*, possesses the power to make law; and that when their fiat goes forth that a thing is impeachable, that is an end of the question. I say, Mr. President, if it has come to that pass, one half of the legislative department of this State can make a law, and thereby bind the other and all the citizens of the State, the sooner we revolutionize the better. If that position be correct, then clear it is, that if the Assembly should impeach a judge because he wore boots instead of shoes with buckles, this Court would be bound by it. I say that this is a correct deduction from the principle asserted, because he says that "*whatever*" the Assembly says is impeachable *is* impeachable; and they might as well say that such a thing was impeachable, as that any thing else was. If, on the contrary, they are bound *by law*, then the Court is to pass upon it, and decide what they consider to be a violation of the law. The Assembly are to impeach the person who they consider has violated the laws of the land, in the manner provided in our constitution, so as to make them amenable before this tribunal. I say this Court, like any other court, is bound to pass upon the question, whether the charge itself contains impeachable matter, and if so, whether it has been sustained by proof. I say, both of these duties devolve upon *this Court.*

The counsel said in another portion of his argument that the Assembly is like a grand jury—that it is the grand inquest of this State. Be it so. I ask, if that is true in point of analogy, whether the principles that are applied to grand juries for determining what is indictable matter, or what not, do not apply in this case? Most unquestionably;—and will any man assert that the grand jury have that power, and that the court is estoped from enquiring into it, and passing upon it? Certainly not. The gentleman says, in continuation, that every mere deviation from the strict line of duty is an impeachable offence, and that an impeachable offence is undefined, and undefinable. He says that you may impeach, therefore, for anything of that character, whether indictable or not. It is not necessary, he says, to establish, as a principle of law, that the offence for which an individual can be impeached, must be indictable. Perhaps, as a matter of principle, it is quite immaterial under our constitution, what may be the law upon this point. He relies upon Judge Story, and upon Rawle, who have treated upon the construction of the same instrument. Now I ask how that principle comports with another, laid down in the same books, and that is, that courts of impeachment were instituted for the purpose of trying high and potent offenders, who might be too strong or powerful for the ordinary judicial tribunals of the State, or country. If it is for trying offenders of that character,

is it not to be assumed, or must it not be conceded, that they might be punished by the ordinary tribunals, but for the potent character of the offenders, who might perhaps turn aside the scales of justice, and thereby evade the just punishment of the law? Most unquestionably. In relation to the doctrine of impeachments in England, we well know, every body knows who is at all versed in the history of that country, that it was formerly within the power of the House of Commons, to impeach for anything they chose. They impeached for whatever they saw fit, and the House of Lords, as a court, passed upon the matter, and as such, decided whether the matter of which the officer was accused, was impeachable—and that court, upon conviction, could pass any judgment it pleased. Yes; that court could sentence the person convicted, to be hanged, guillotined, imprisoned, fined, or anything that political animosity might suggest—justice require, or law demand.

Such punishment was inflicted, as in the judgment of the court, was by the law demanded.

Not so here,—we have a guide in our Constitution. It has *impressed* upon it the limits, which we may not pass. The language of that instrument shows that its framers, and we must presume that the people who adopted it intended to establish a rule by which we should be guided; to fix a line, beyond which we must not go. By our constitution, two and *only* two judgments, can be pronounced by this court.—One is, "*removal from office,*" the other "*removal from office, and disqualification to hold any office of honor, profit, or trust, under the State.*"

Mr. President, there is another matter which was stated by the counsel in his opening. Here, (he says,) is a great array of charges. He then flourishes this book, (containing the articles of Impeachment,) before this court, and exclaims:

"Put all the Impeachments ever tried in the United States, together in one side of the scales, and this book in the other, and these charges will weigh them all down, as lead weighs down feathers!" This may be so. But, Mr. President, if so, it is not because the prosecution have been able to establish anything savoring of crime, against the respondent, but *it is* because these charges are deeply dyed, or intermixed with that species of crime not inappropriately termed base persecution. If this intermixture weighs heavily, then I confess, it may weigh down all the impeachments known to our history. But again I say, it *is not because* the respondent is guilty of anything charged against him. The counsel also says, with peculiar satisfaction, that "if the respondent is guilty of what is here charged, he has never fallen into crime," but that he "has never risen to virtue."—That may be. At all events, if he has not fallen into crime, he has at least risen to the "dignity of being hated." Whatever may have been the views of Mr. Justice Story, in relation to the powers of the House of Representatives to impeach persons or officers for offences under the constitution of the United States, or whatever may be thought of the soundness of his positions, are matters, I apprehend, that have nothing to do with this case.

It will be noticed that the constitution of the United States provides that the "House of Representitives *shall have the sole power of impeachment.*" By this language the *power* to impeach is not *limited* or confined to any particular matter or class of cases.

It is then unlike our constitution, which provides for what matters a civil officer may be impeached. In ours it is declared that the "House of Repre-

sentatives may impeach all civil officers of the State, *for corrupt conduct in office, or for crimes and misdemeanors.*

Within this limitation, the impeaching body of this State must be confined. It occurs to me that there is a great difference between this restrictive language in our constitution, and that unlimited expression,—The House of Representatives "*shall have the sole power of impeachment.*" This broad language would invest an impeaching body in this country with as ample and unlimited power to impeach for any cause as was ever possessed by the House of Commons, in England.

No attention appears to have been bestowed to this language, broad as it is, by the commentators Story and Rawle. On the contrary, they considered, as intimated by counsel for the prosecution, that section four, article two, was the provision which granted the power to impeach, and also determined the limitation of that power. The reading of this section is, "the President, Vice President, and all civil officers of the United States, *shall be removed* from office, on impeachment for, and conviction of *treason*, *bribery*, or other *high* crimes and misdemeanors."

Upon close examination of this language it will be seen that it by no means contains a *grant* or *limitation* of power, but that it amounts to a mere declaration of *what shall follow* a *conviction* on impeachment of any of the officers named, for any of the causes mentioned; and what is that which is to follow. Why, simply a *removal from office*. If this is a grant of power to give judgment, it is also a limitation of that power, and of consequence in the enumerated cases the Court *could not* give judgment of *disqualification to hold office* in future, but would have to stop *when* judgment of *removal* was *pronounced*. All the power here granted, if any, would have existed in the Court, by virtue of its power as a court to *try* the offender under another provision of the constitution, wherein is also declared *what* the *judgment* shall be, in cases of impeachment. How, then, can it be properly said that this section four is a limitation of power?

Enough of this, however. Our constitution is, I apprehend, to guide and control this Court. A correct construction of this instrument, will, in my humble opinion, show, that in order to convict an individual upon an impeachment, it is necessary that the offence charged, should by the laws of this State be indictable.

The gentleman, although not as positive in relation to the construction of our constitution, as he is upon some other matters asserted, *is*, he says, firmly convinced that it is not necessary, that the matter, or offence charged should be indictable, but, that matter not indictable is impeachable, and that it is very proper if not necessary, that it should be so. Of all this the counsel may be well satisfied, but I am constrained to say that his reasoning has fell far short of satisfying my mind of the soundness of his positions. The learned counsel is also of the opinion that section one, of article seven, so far as impeachments are concerned, is exactly equivalent to section thirteen, of the same article. In other words, that the remedies provided in these sections are concurrent.—This section thirteen provides that "any judge of the *Supreme* or *Circuit* Court may be *removed from office* by address of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein." Mr. President, it is worthy of notice, that in this section the power to remove, is confined to Judges

of the Circuit and Supreme Courts, and that as to these functionaries, the power is unlimited—they may be removed for *any* cause, whether indictable or not; all that is necessary in order to do this, is to get up an address, and procure for removal, a two-third's vote of each house. The legislature can arbitrarily exercise the power of removal by address, and may remove for any cause, whether good or bad, and the act would be irreversible—it would be an act beyond the control of man, and for the obvious reason that the legislature would be acting within the scope of legitimate authority. The only thing which a judge of the Circuit or Supreme Court can with safety rely on under this section of the constitution, is the virtue of the two houses—and, that legislators will not out of mere revenge, or to serve mere political purposes, remove without good cause. There seems to have been a necessity for this power of removal, because it is provided that for *corrupt conduct in office* or for *crimes* and *misdemeanors* any civil officer may be impeached, and on conviction that such officer should be removed.

Now we know very well, that as it is by the Constitution provided, that these officers *shall* be removed, on impeachment, there might be cases when it would be necessary to remove an individual from office, although not guilty of every crime, either a misdemeanor, a felony, or of *corrupt conduct*.—Suppose a Judge should become insane, and to all appearance that the insanity would be a permanent affliction; I ask if it is not the duty of the Legislature to remove that Judge from his office for the purpose of filling it with another? Most unquestionably. There may be other cases. It may be that a Judge might commit murder; and according to Judge Story it would not be an offence committed in the exercise of his office; but he would nevertheless, be amenable to the laws of his country, and might be convicted and shut up for life in the Penitentiary. Unquestionably the two houses of the legislature could remove him by address. Other cases might be put.

Suppose the people have sent representatives here who have virtue enough not to remove a man unless for cause. If such be the fact, then I say that section should be limited to cases where a person *ought* to be removed from his office, but who is not *guilty* of an indictable or impeachable offence; and I say if this respondent is not convicted under that rule of law which makes an act an indictable offence, for aught this impeachment, he is entitled to hold his office. It is not material whether the Respondent has committed any crime or misdemeanor other than that connected in connection with his office, because as it is said by the Counsel opposed they do not contend that he is charged with any crime or misdemeanor whatever except such as has been done under color, or in connection with his office.—The language of this portion of the Constitution on impeachments, as before said, is—"The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors."

Now, I say, the power of the House of Representatives is confined to impeaching officers of this State, for corrupt conduct in office, or for crimes and misdemeanors. If we follow the sentence out, and supply the ellipsis, it will read, "or for crimes and misdemeanors in office." If it is not a crime in office, that is impeachable crime, it is quite immaterial whether the act charged, was done in office or outside of it; because if you follow it up as I have anticipated, it would then be within the meaning of the Articles preferred against the res-

pondent. I ask, whether "*corrupt conduct in office*" is an indictable offence. Most unquestionably it is indictable. Does not every lawyer know that every officer is indictable for corrupt conduct in office, and that the mode of proceedings generally adopted in England, (from whence we borrow our criminal jurisprudence) is by criminal information? Most certainly. And although they can proceed, in England, by information, yet for the same matter an *individual* may be indicted. Under our laws, we cannot proceed except by indictment, for the reason that no person can be put upon trial except he be indicted by a grand jury—with some slight exceptions. I will turn to the Constitution, and we will have a better understanding of the matter. This is the language—"No person shall be held to answer for a criminal offence, unless on the presentment or indictment of the grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy," &c.

We have then a constitutional inhibition, in relation to this matter of criminal information. In England they could proceed by information or indictment in the name of the attorney general. In this country it is necessary to proceed by indictment, for official as well as other crimes, and in that form the person can be put upon trial. In connection with this subject, before I discuss the meaning of corrupt conduct, I wish to call the attention of the Court to some authorities upon that subject. I will not take up the time of the Court, upon the doctrine as laid down upon such proceedings, further than to come to the point. I read from Archbold's criminal pleadings, page 91, side paging 75. The author says: "The Court will grant a criminal information against a magistrate, for any illegal act committed by him from corrupt or vindictive motives." In support of which, he cites various authorities. He then proceeds: "but not when he appears to have acted from ignorance or mistake; nor will they grant it against justices acting in sessions, except in very flagrant cases.

"So against ministerial officers, for any act of oppression, or for any illegal act committed by them, in the execution of their duties, from corrupt, vindictive, or other improper motives, the Court will grant a criminal information; but not when they act from ignorance or mistake merely. Thus, informations have been granted against overseers; for a conspiracy by parish officers, to marry persons settled in different parishes, and for procuring one to marry an idiot chargeable to the parish; but the Court have now resolved to refuse informations, in cases like these, and to leave the applicant to his remedy by indictment."

This authority shows that you may proceed either way. Then, I say, that corrupt conduct in office is an indictable offence. The great question in this case, so far as the law is concerned, is to settle first what is "*corrupt conduct in office.*" Now, I say, that is susceptible of a definition. I say, that when the people of this State adopted that constitution, they meant something by it. It is not an unmeaning term; it does mean something. The people supposed it meant something, and it is capable of definition. It does not follow, because you do not call it bribery, extortion, arbitrary exercise of power, it is not, therefore, definable. I say, that arbitrary exercise of power is corrupt conduct. That is properly definable. The gentleman, Mr. Ryan, has attempted to define it, and says it is for malversation in office. Lest I mistake his language, I read from his printed speech—"What is corrupt conduct? it is mal conduct. It is malversation. It is the omission of that which is duty, or the doing of that which is contrary to duty. It embraces all official abuse, all wilful maladministration."

Let us examine that for a moment. It is the duty of every judge to decide every proposition submitted to him in accordance with law. I ask, whether it is corrupt *conduct in office* if he does not do his duty? Certainly not. The best judges may err; and, I ask, whether when they do err, and decide contrary to what the law is, whether that is not a deviation from their duty? Certainly so. He says, "it embraces all official abuse, and all wilful mal-administration." Well, what is meant by the term "wilful," here used, I know not. He may have attempted to use this word in a sense I do not understand; but it is obvious that a judge may decide a point of law wilfully, and against what he is well satisfied is the law, and yet not be guilty of corrupt conduct by so doing. Now, nothing is more common than for a judge to decide contrary to what he thinks or knows is law, for the purpose of having the decision taken to another court, so as to have the law settled upon that particular point. The counsel says—"He who, no matter how little, departs from the duty of his office, is guilty of corrupt conduct in his office." I have already said all that I wish to say upon that subject. I think that definition cannot be sustained by any just rule of interpretation that has been settled by usage in courts, or out of courts. I now propose to give what I understand to be a correct definition of corrupt conduct in office; and that there may be no mistake about it, I present it to the consideration of the Court, as I have drawn it upon paper. We understand perfectly, that the words, *corrupt*, *just*, *upright*, *improper*, &c., are qualifying words, and when applied to conduct, they qualify the particular kind of conduct. Therefore we say *corrupt conduct*, *just conduct*, or *upright conduct*, for the purpose of conveying our ideas of a particular action. I say, then, that upright conduct in office is the opposite of corrupt conduct; just or upright conduct is the acting in strict conformity with the rules or *laws* in force for the guidance of the particular officer, to the extent of his ability and understanding, in his mind then present, with no ulterior object in view other than a faithful discharge of his official duties."

The latter—*corrupt conduct in office*—"is the acting in *opposition* or *contrary* to the rules or laws concerning which the official incumbent is to act, and against his better knowledge, in his mind then being, or of which he was then conscious, with the *intent*, and for the purpose, of accomplishing some particular ulterior object, or objects, other than the faithful discharge of his duty as such officer, to the *injury* or oppression of some other person or persons, body or bodies. In other words, it is the doing of *an act*, which the officer at that time *knows to be wrong*, with the *intent* thereby to secure some personal profit or advantage, or to *injure*, *oppress*, or wrong some other person."

My opinion is, Mr. President, that no one ever supposed any article reported contains in strict language a charge of corrupt conduct, until it entered the imagination of the Counsel for the Managers, and I very much doubt whether he has satisfied any one but himself that that position is correct. If then we have arrived at a correct interpretation of "*corrupt conduct in office*" which is equivalent to misdemeanor in office or crime in office, then we have laid a foundation whereupon we may rear a superstructure that may be seen and known by all. I say that the framers of that instrument did intend something of a definite character by the language "corrupt conduct in office," or they meant nothing at all. It is not to be presumed that they meant nothing by the language used; but that they did mean something; and we trust that we have given a definition

which is in accordance with the views of the people at the time they adopted that instrument. We contend then, Mr. President, that it was absolutely necessary in preferring these articles of impeachment, to show upon the face of the articles that the act or acts which it is alleged have been done, performed or committed by the Respondent, amount to corrupt conduct, or that he is guilty of a misdemeanor in office, which would be corrupt conduct in office. *They* must show that the party is guilty of some crime for which he may be impeached with in the purview of the provision of the Constitution. We further say that it is necessary for the prosecution to establish the *intent* to do wrong, because if a man acting in the capacity of Judge of a Court should decide a point of law wrong, yet notwithstanding it should be conceded by everybody to be wrong, if he decided it wrong with the view of having the question of law settled on the subject from proper motives, instead of improper motives, then we say he is not amenable to this Court, nor to any Court, nor to any tribunal whatever. Then it becomes necessary to establish the *wrongful intent*. The Counsel will contend, as he has already contended in his former argument, that it is not necessary to show the wrongful intent as an independent fact, but that the wrongful intent is to be presumed from the fact of his doing the act, and that that is in accordance with law. That is another doctrine which is a heresy in my opinion. It is a legal heresy that cannot be maintained even by the learned counsel who is its author.—I care not how great may be the powers of any man, I challenge him to maintain that as a correct proposition of law.

Another position which we shall assume is this:—that when the impeaching body use language in the articles of impeachment, by that language they are bound. They are not at liberty to discard that language and say that it means something else than what is obviously the meaning of the particular language used. These then are the general principles for which we all contend, and as we pass from article to article we shall endeavor to apply those rules of law which we consider well established as governing matters of this kind, and when we have so done, we shall submit this case to the consideration of the Court.

I shall now proceed to an examination of the various articles and specifications *checked*, and give my views upon them in as brief a manner as I possibly can. At the same time, I wish to speak a sufficient length of time to be properly understood by the Court. I had not supposed that the Hon. Managers would contend that they had introduced proof here that had even a tendency to show that all these charges, or any of them that have been marked, had been sustained. The object of enquiring and receiving the information from the Hon. Managers was to save time. We did not wish to spend time in discussing the matter of a specification unless they were determined to insist in the closing of this case, that that particular specification had been sustained by proof. This being the case, it will take some more time than I had anticipated in discussing the matter, because there are many matters, as I said before, that I did not suppose it possible for any human being to entertain such an opinion as is held by the Managers and their counsel.

I shall now proceed to the discussion of the first article of impeachment. (Mr. KNOWLTON read the Article.)

Now, Mr. President, a person reading this article over casually, would suppose there was something heinous charged, something tremendous; but let us dissect it, and see what it amounts to. It is said in the first place that Judge

Hubbell permitted the said Wm. Sanderson, who was one of the defendants, and was interested and desirous that the said plaintiff should succeed in maintaining his case, to cousult and advise with him. That is, allowed a conversation with him. The Judge permitted him to talk with him. Well, it does not state that he permitted him to talk with him in relation to the merits of that case, or advise with him in relation to it. It does not state that he promised to decide that case one way or the other, or, in fact, that he gave him an opinion one way or the other in relation to this proceeding; but he allowed him to talk to him. Well, I want to know, if it is the duty of a Judge, when a suitor in his Court speaks to him about his case, to kick that individual from his presence? I wish to understand if that is the opinion of the learned counsel for the Managers. Is that the duty of the Judge—that when a man comes and talks with him, he is under obligations to commit an assault and battery upon the inquirer. Is that the law binding upon a judge? On the contrary, is it not the duty of the judge, when *he* is enquired of by a suitor, to inform him in relation to the proper course to be pursued in his Courts, so that time and trouble may be saved; and so that the cause may be disposed of in accordance with the rule of law, and the practice of the Court.

If the judge had agreed to decide the cause in a particular way, and he had fulfilled that promise, without attending to the facts presented upon the hearing, it might be urged that he had done wrong. Now, I believe it to be the duty of the Judge to direct parties in relation to the mode of conducting proceedings according to the practice of the Court, whether the cause is pending or to be pending. I do not believe that to be improper conduct; on the contrary, I believe it to be very proper. It is next to impossible for a judge to get along without it, and if that is corrupt conduct, there is no judge in this state that you cannot impeach—I say no judge. Where the gentleman gets the law to sustain this particular allegation, I know not. I had supposed that the provision of the statute, which has been read, meant that the judge should not advise a suitor upon the merits of the case, and that it did not mean that he must keep others from talking to him. That *may be* the construction of that statute, but it is a very singular one. Declaring that I shall not talk to you, is the same as declaring that you shall not talk to me. The judge is inhibited from advising suitors, their attorneys or friends, that they must do certain things, for the purpose of sustaining or defeating an action, in other words, he is not to act as counsel in the case, telling them they must do this way or not do that way, in order to maintain or defeat an action.

Well, the next thing that is alleged, in point of fact, is that he "revealed to the said William Sanderson, that he, the said Levi Hubbell, would decide the said issue of fact in favor of the said plaintiff." That is the next allegation; and that, thereupon, afterwards he did inform—in other words, it is insinuating that he promised to decide in a particular way, and that he kept his promise, and did it. Well, what is the proof upon that subject? Every member of this Court will doubtless recollect what the proof upon that subject is. It is simply this, that after Sanderson returned from New York, he inquired of Judge Hubbell whether he had made up his mind upon that case; Judge Hubbell told him he had. He then requested the Judge to inform him what the decision was—not what the decision *would be*—but *what it was*. Judge Hubbell had no objection to tell him what it was, and told Sanderson that if he would go

down to Court on a certain day he would hear him pronounce it from the bench; but Sanderson was desirous of knowing then, and the Judge having previously told Mr. Arnold what the decision was, he had no hesitancy in telling Mr. Sanderson. Is that corrupt conduct? Is that a criminal offence? The respondent had examined the evidence and formed an opinion while Mr. Sanderson was gone to New York. Well, then, we have disposed of this matter so far as the allegation is concerned. The allegation in itself does not, however, in reality amount to anything in any way, shape, or manner.

Then, the charge continues—"that the Judge did solicit and *borrow* from the said William Sanderson the sum of $200," &c. Well, now if he did borrow $200 of Mr. Sanderson, what of that? Is it criminal conduct to borrow money? If so, you must make Judges rich to begin with. You must make an appropriation to every Judge, so that he may be independent, so that at no time will he need money. If it has got to be corrupt conduct because a Judge needs money and borrows it, his condition is deplorable. Now, if he *borrowed* this money he did not receive it as a *bribe*. It is not possible in the same isolated transaction to borrow and receive the same thing as a bribe. Sanderson then, loaned Judge Hubbell $200, and Judge Hubbell borrowed that money according to the allegation. Now, who ever supposed that an officer who had borrowed money *received* it as a bribe, or because he borrowed it, he was guilty of receiving it as a bribe. The prosecution are not at liberty to deny that that money was absolutely borrowed by the Judge, and loaned by Sanderson, because the fact is so alleged, and being so it cannot be gainsayed. In relation to the proof upon this subject I shall speak presently. It is further said by counsel, that the Judge having borrowed this money without having given any voucher for it, and Sanderson intending that the Judge should receive it as a gift for the decision he should make in that case, that it is therefore a bribe. But suppose Sanderson did intend it as a bribe, and intended to corrupt and buy up Judge Hubbell. I say, suppose he did—I ask, whether because another individual had criminal intentions, you can convict an innocent party. Is one man guilty because crime exists in the heart of another man. The doctrine is monstrous. There is no corrupt motive shown in this transaction, unless it may be in the heart and conduct of Sanderson; none whatever is shown in that of Judge Hubbell.

Nothing is more common than to borrow money without making any agreement in relation to paying back, or refunding the money, or giving a voucher therefor. What is more common than for one merchant to step to an adjoining door and borrow money of his brother merchant, a hundred dollars—a thousand dollars even—and nothing said in relation to repayment, the party loaning supposing it will be returned soon? I say, then, as this is an every day's occurrence in accordance with the actions of mankind generally, from *that act* merely we cannot infer any wrongful intent existing in the heart of Judge Hubbell. But what is the testimony upon that point? Why, the testimony of Sanderson is that Judge Hubbell told him he wanted to borrow $200 for a few days, mentioning at the same time special reasons for it. Sanderson told him he could let him have it just as well as not; and Judge Hubbell said if he could it would accommodate him very much, and he would pay it in a very few days. Is there anything that savors of criminality here? He had been a long time holding Court—the term had been a long one. It was something like twenty

daysafter the matter of the traverse of the affidavit in this case was submitted to him for his consideration, before he could get time to examine the evidence, and decide it. He was engaged continually trying important cases; commencing court at 8 o'clock in the morning; holding all day, with only short intermissions at noon; and the last day that this case was before him, sitting from morning till night without intermission, without adjournment even for dinner. He had been holding court also in other counties. I say, then, it is apparent what motive actuated him in borrowing this money. A son of his had been off somewhere to school, and his bills had become due. Judge Hubbell could not run around at that busy season and get the money; yet he wished to pay that bill promptly, as any man of honor would. The necessity was then pressing, when by chance he met Sanderson, and asked him for the money. Was there anything wrong in that? If so, I cannot discover it. The counsel opposed, will contend that he *pretended* that he wished to borrow it. *That is not it.* It is not so charged; they have not so proved it. Is that the language of the witness? Is the gentleman going to say that the witness swore falsely here? He is their own witness; and he is the only witness knowing to, and showing the passing of the money from his hand to Judge Hubbell. They must admit that that witness told the truth in relation to that matter, or else they must say there is no proof upon the subject.

It is, then, alleged that this loan remained unpaid for a long time. Well, that is probable corrupt conduct also. Lapse of time in making payment then, has the effect to make the borrowing of a sum of money corrupt conduct. That is a new-fangled notion that I apprehend is not very well established as a principle of law. Almost any of us who hold office might be impeached if that be the case. They say it was "intended and regarded by the said Wm. Sanderson as a gift for a *long time.*" It is not charged that Judge Hubbell intended and regarded it as a gift. The object is to convict Judge Hubbell, not because Judge Hubbell had any wrongful intent; but because Sanderson had. That is the attempt. You can perceive the ingenuity that has been displayed in the drafting that article. They are perfectly conscious, I say, that the Judge had no unlawful or corrupt intent in obtaining this money, and therefore the attempt to make out crime by insinuation. We have sufficient evidence that the learned counsel for the managers who drafted these articles, was conscious that the conduct of the Judge was in no wise reprehensible. He it was, before the committee, who examined the witness. He knew its force, and notwithstanding he here states that he had been called upon suddenly, and that he was somewhat unprepared, yet I ask if the manner of examining the witnesses upon the stand, diving into all the minutiæ of every transaction does not show that he had exerted himself in no common degree in hunting up, and thoroughly probing every thing, and that he must have spent much time in conversing with all the various witnesses from whom he had expected to elicit a fact. I say it has taxed the ingenuity of the learned counsel opposed, to frame this article in order that he might spread before the world what would look like something wrong, and yet put it in language that really charges nothing but what is right. I say the ingenuity displayed in the drafting that article was never before surpassed, if equalled—all the while talking about Mr. Sanderson's bad conduct or bad intent, without even once averring that Judge Hubbell intended to receive it as a bribe or that he intended to decide that case one way or the other, from any im-

proper motive. I ask for what he is to be impeached in this article, unless it is a crime to ask a man to loan him money, and then leave it unpaid for a considerable time. If that is an impeachable offence, then true it is that the respondent must be convicted. If the Court establish that as a correct principle of law, you will see what few Judges we have in this State, tendering their resignations, for they are all in manifest danger of impeachment. There is not a thing alleged in relation to that money transaction that you cannot allege against any Judge in this State, unless we except Judge Whiton, who may be above the position and necessity of borrowing money, but I believe he is the only Judge in this State who does not occasionally want to borrow money. It may be a crime to be poor. It has been generally conceded that it was excessively inconvenient, but now forsooth, it is impeachable.

What is the testimony upon this subject of non-payment? The testimony of Sanderson is, that he *loaned* this money to the Judge. He says, that after the cause was submitted to Judge Hubbell, or perhaps before it was actually submitted, he had to go to New York on business. He did go, and did not return till the Monday or Tuesday preceding the day when the opinion was pronounced by Judge Hubbell, in Court. That is what he testifies. Then it was that he loaned this money. He testifies, that shortly after that, Judge Hubbell startedto New York, having married in the mean time, and upon his return, which he thinks was sometime in the latter part of August, he met the Judge, passed the usual salutations of the morning, shook hands and all that, and then Judge Hubbell says—"Mr. Sanderson, I am in funds now, and can pay you that money." Then it was, for the *first* time, that Sanderson divulged his intention of giving him the money. He said something from which the Judge could, and did infer that he intended it as a gift; but the Judge promptly replied, "*if you intend that as a gift*, I cannot receive it." That was long before any hue and cry was raised, that Judge Hubbell had been bribed, or improperly induced, to decide a case involving $21,000. It was long before it was spread broad cast through Milwaukee and other parts of the country, that Judge Hubbell was to be impeached. I ask whether Judge Hubbell did suppose that he had borrowed that money and must pay it. Can any one from the testimony, doubt that he did so think?

The moment Sanderson divulges his improper motives—the moment he intimates his intention to make the loan a gift—the Judge says, "*I cannot receive it as a gift*," much less as a bribe. What more would you have of a man than this. Some further conversation, it appears, transpired between them, and as Sanderson says, he told the Judge he did not want the money, he would consider it so much money in the hands of Judge Hubbell, and when he needed it, he should know where to call for it. It laid in that way for some time, and Judge Hubbell again sent for him, and said he wanted to pay him that money. Sanderson says he got a note from the Judge, through the Post Office, or in some way, whereupon he went to the Judge's rooms, and the Judge told him he wished to pay him that money. After talking with him a while, Sanderson again says, he did not think he ought to take that money. He intimated that the Judge had just been married, and had spent a good deal of money in his election, and all that kind of rigmarole. But Judge Hubbell would not listen to any of it, and went outto get the money; but the man was gone, from whom he expected to get the money. The Judge then says, "let me give you a note,"

which he did. It had then been rumored that the Judge was to be impeached. Sanderson had heard of it; but says, he never had any conversation with Judge Hubbell, in relation to the charges, until after he had left the money in the chair. We may reasonably anticipate that the Judge had also heard this rumor. The Judge wanted to discharge the debt, however, and so sent for Sanderson; he went where the Judge was, and then wanted that the Judge should keep the money. The Judge, however, insisted upon paying it, and handed him a package of bills marked $200, and looking as if they had just come from the bank. What did Sanderson do, after he received the money? Why, he stepped behind Judge Hubbell, and as he turned and went out he left the money in the chair, in which he had been sitting. Well, now, what more could Judge Hubbell do? The more he tried to pay him that money, the worse he seemed to make it. The Judge could do nothing more, for if he made any further attempts to pay, Sanderson was likely to make matters worse; no man could know or anticipate what he would do; and there was no way left to manage the affair, except to let it rest, and keep perfectly still. When Sanderson comes upon the stand, he is under obligations to testify most unequivocally, that the Judge *solicited* that money *as a loan*, and *received it as a loan*, and *not* as a gift. The members of the Court will, most unquestionably, remember that. He testifies further in answer to an interrogatory put by Judge Dunn, that the Judge told him what his decision was in that case, after it had been submitted for adjudication, but *before* it was announced in Court. He testifies that he left that money in the chair of his own will and pleasure, of his own volition, and not with the knowledge, consent or assent of Judge Hubbell, so far as he knows it. He says so far as he knows, Judge Hubbell did not know that he left that money there. Judge Hubbell was writing at his desk; and as he stepped out, behind the Judge, he left it in the chair. Well, Judge Hubbell found it there, unquestionably; but what could he do with it? He could do nothing more with it. He had run around after Sanderson sufficiently to pay it. The great question is, whether Judge Hubbell was bribed in that case? The counsel who opened this case on the part of the prosecution, said that this was a charge of bribery; I must confess, if he had not so informed us, I never should have even suspected it.

Now, what is bribery? It is receiving or paying for an act done, or to be done; an undue compensation to an officer for the doing, or having done *the act*, pursuant to understanding, arrangement, or agreement. That *is*, a compensation to which the officer is not entitled for the doing of the act. Did Judge Hubbell receive as a bribe the *enormous* sum of $200 of William Sanderson, and in consideration of that $200 did he decide the case in favor of the plaintiffs—in that suit involving some $21,000? Is there any member of this Court who believes that Judge Hubbell decided that case in consideration of the sum of $200, or for any consideration passing from Mr. Sanderson, or from any other person, to Judge Hubbell; or that he decided that case upon any other than the principles of law as he understood them, and upon the evidence submitted to his consideration. I say that this latter conclusion is irresistible. And to suppose that Judge Hubbell would sell himself so cheap—that he had no higher price than $200, when he could just as well have had $1000 or $2000, is supremely ridiculous, contemptibly ridiculous. The witnesses have detailed to you some of the points of law that were contended for upon the part of the

tiff and on behalf of the defence, something in relation to the positions assumed in that case, and also somewhat as to the facts that were proven upon that trial. Fraud was the great charge alleged against the defendants, the Comstocks, in that case; and Judge Hubbell, upon the evidence that was submitted to his consideration, was under obligations to hold that they were guilty of the fraud charged. There is no pretence that that decision was not a correct decision, and in strict accordance with law. We do not hear that the defendants or claimant complain of that adjudication. There is no pretence that that ruling was not correct, yet notwithstanding the respondent has decided the case correctly—and all parties believe that he decided it correctly—it is, nevertheless, a misdemeanor, or crime of some sort. It is very seldom that men have had to be bribed to do things properly. It may be, however, that *some* Judges have been hired to do things properly, and in accordance with law. Well, I say, when we consider the evidence, when we consider what the appearance of the witness was before the Court, when we consider that that was not an erroneous decision, when we consider that Mr. Arnold had gone to Judge Hubbell the Sunday evening before, stating that he should see one of his clients in New York, and he wished to be able to tell him the result of that trial, and requested that the Judge would inform him what his decision would be if his mind was made up on the case—and that the Judge did communicate to Mr. Arnold that he had made up his mind, and that he should sustain the attachment. When we consider all these things, and also consider that Mr. Arnold obtained this knowledge from the Judge before Sanderson was told any thing about it; under all these circumstances, I must confess that my mind is too obtuse to discover any thing in the conduct of the respondent that is in any way tinged with criminality.

Did Judge Hubbell inform Mr. Arnold of his decision. Mr. Arnold says when he went into his room the Judge had the Sanderson papers before him—to avoid circumlocution and for the sake of brevity, I call this the Sanderson case. He stated to the Judge that he was going to New York and should see his Clients, Perry & Co., and they would be anxious to know what the ruling in that case had been. Judge Hubbell said "I have been at work upon this business all day, and I have made up my mind. I find the testimony much stronger than I had expected. I have concluded to sustain the affidavit."

That was before Sanderson had returned, and of course before the Judge announced the same decision to him. You may call it improper to inform Mr. Arnold the result of his examination and deliberations; however I am not disposed to so consider it.—Judges very frequently do as the respondent did, even without solicitation. You may read Cowen's Treatise and you will find that Cowen states in that work that a certain Judge had informed him in a cause that Mr. Cowen had argued before him, that a certain case, or cases, decided in Massachusetts, spoke the law to his (the Judge's) mind. Who ever thought there was any wrong in that? Now it is certainly a little singular that such declaration has got to be a crime or corrupt conduct. If Judge Hubbell announced to Mr. Arnold that decision as he testifies, I ask whether there is any member of this Court who believes that Jonathan E. Arnold did, or would undertake to corrupt Judge Hubbell? He asked the Judge if he had determined what his opinion or decision in the case would be, and what it was; and Judge Hubbell tells him. He does not consider there is any impropriety in it, and thereupon

tells him. Is there any thing improper in it? Certainly not. He says that was on Sunday, before 5 o'clock, he thinks it was before 5, because he rode out after that some few miles in the country to his father's; and that is the reason he thinks it was before 5 o'clock. Sanderson testifies that it was on the Monday or Tuesday preceding the day that Judge Hubbell pronounced his opinion in open Court, and he was present a portion of the time while the Judge was delivering his opinion. Have we any reason to suppose that Judge Hubbell was influenced then, in relation to this case?

Sanderson had called to see him about it in Madison, and had some conversation with him about the case. He testifies himself, that he undertook to get some opinion from the Judge, if he possibly could, while here in Madison; but with all his ingenuity—all that he could extract from the Judge was that if there was fraud in the case he would probably be able to discover it; that he would decide that case according to the principles of law and justice; and that the character of parties would have no influence with him in making the decision. Is that the language of a corrupt Judge—that he would decide a case according to law and justice, and if there was fraud in it he would be able to discover it from the testimony—and that he will not be influenced by the high moral position of either party? If that is the language of a corrupt Judge, give me those who are corrupt, and the prosecution may have the virtuous.

They put the witness, Sanderson, through a severe examination—a cross examination, as my colleague calls it. The appearance of the witness upon the stand, was anything but what we desired; he being all the while conscious, that *he* had done wrong, his conduct was, of consequence, disengenuous in the extreme. He was unquestionably filled with the idea that he had been attempting something wrong. Throughout that long examination they extracted from the witness only that one fact, that is so far as the conversation with Judge Hubbell in Madison, was concerned. They asked him if he had not expressed greater confidence of success in that suit, after he had returned from Madison, than before. He said that perhaps he had, but gave as a reason for it, that he had received letters giving evidence of the transfer of other property of the Comstocks in other counties in the State, upon which he could place some reliance, to establish the fact of fraud, that had been charged in the affidavit. I say then, that it is impossible for any man, who will consider the testimony on this article, and consider it with deliberation, and without prejudice, to come to the conclusion that this charge has been sustained, even admitting, if you please, for the purposes of the case, that it is a charge of bribery or corrupt conduct in office, or that it is a crime or misdemeanor in office. It is immaterial what you call it. But I say the testimony absolutely negatives the idea that he is guilty of any wrongful act.

It is said that this money remains a gift, in the hands of Judge Hubbell. Well, if that be so, let it *be a gift*. It has not been shown that this money had any connection with Judge Hubbell's decision of the case.

The difficulty in *this* case, is, first, that they do not charge bribery in the article, and in the next place, the proof does not show any wrongful act by, or bad intent in, the Judge. And of course the prosecution are not entitled to indulge in a presumption of guilt in the absence of proof. It is alleged that this money was "collusively" paid to Sanderson, when it *was* paid. I never before heard that a man could pay what he honestly owed, "*collusively*."

How this operation can be performed, will be demonstrated by the counsel opposed. I can but think that every member of the Court, must be perfectly satisfied, that the proof shows conclusively that the conduct of Judge Hubbell in this whole matter, both in the hearing of the cause, and in disposing of it upon the evidence, was entirely proper; and that he was not influenced to make any decision, or the one he did make for this, or any sum of money, or by reason of any promises of any kind, and that he had no desire to make any other disposition of the case, than such as was consistent with the faithful discharge of his duty.

I now pass on to the next specification, that the Respondent "having purchased from one Jonathan Taylor, a certain judgment," &c. The essence of this charge is, that Judge Hubbell has made a decision in a case, in which he was pecuniarily interested, and that *that* decision was founded upon a judgment which had been rendered in favor of Jonathan Taylor, and assigned to Levi Blossom, for the use and benefit of the respondent, and that notwithstanding Levi Blossom held this judgment for the benefit of the respondent; and that notwithstanding this, he, Blossom, filed a bill, called a creditor's bill, in the Circuit Court of Milwaukee county, and got an injunction—which by the way was not granted by Judge Hubbell, but by a Commissioner—and that Judge Hubbell did afterwards sit in that cause, and dissol e that injunction, or rather modified it though it is charged that he did in fact dissolve that injunction.

Now, what is the proof? The proof is, that Jonathan Taylor did get a judgment in the Circuit Court of Racine county, rendered by Judge Whiton against the city of Milwaukee, and that subsequently this judgment was assigned by Taylor to Henry P. Hubbell. Now, it is not alleged in this specification, that that judgment was assigned to Henry P. Hubbell, and so far as that is concerned, all that matter is out of this case. It does not appear from the evidence, that Henry P. Hubbell assigned it to Blossom; consequently they cannot show any thing as to an assignment to H. P. Hubbell, andrely upon that as testimony in the case. If the charge were proved as alleged, then the respondent would have been the *cestui que trust*, and Blossom would have been his trustee. Taylor does testify, however, that he made an assignment of this judgment to Henry P. Hubbell upon the suggestion of Judge Hubbell, in a letter written by him whilst here at Madison. He wrote him a letter from this place, in which he suggests to Taylor that he ought to, or had better assign that judgment, for *his own* safety, to Henry P. Hubbell, or to some other person whom he named. It will be recollected that Judge Hubbell had previously been his counsel, and he knew his condition pecuniarily. So far as his heart was concerned, he could not know it; neither can any man know it. They had been friends. He advised him for his own safety, not for the benefit of Levi Hubbell, that he should assign that judgment to somebody else; and he says that he did assign it upon that suggestion, before Judge Hubbell returned from Madison. Very well; he then goes on, and here is his testimony from the point. He says that he did, after making that assignment to Henry P. Hubbell, make an agreement with the respondent, by which the respondent obtained that judgment for $800 or $850, that being the sum of money for which he agreed to sell it. Now, he says, that in making that agreement, the judgment was assigned to Levi Blossom. He says farther, that this assignment was made, and that he neve. made but one assignment to Levi Blossom, and that was done on

the first Tuesday after Judge Hubbell returned to Milwaukee from this place, which would have been the 20th of the month, because Judge Hubbell is conceded to have been here on the 14th. It must have been the 20th of the month, if Taylor is correct about its being Tuesday. Previous to that time, a negotiation had been going on between Blossom and Henry P. Hubbell. He had been endeavoring to sell this judgment to him. If Judge Hubbell had bought it, it was well enough to have it stand there—if not, H. P. Hubbell owned it, and appears to have been desirous of disposing of it in some way. Then, I say, Henry P. Hubbell was either trying to sell it as his own, or as the agent for Judge Hubbell. He was negotiating to turn it into money in some way. That H. P. Hubbell had bought this judgment of Judge Hubbell, before the assignment to Blossom, and after the Judge had bargained for it with Taylor, is perfectly consistent with all the testimony, and that Henry P. Hubbell contracted to, and did sell it to Blossom as his own, and while, in fact, it was his own. In the negotiation between them, Blossom said he would confer with Mr. Taylor, and if he found it all right he would make a bargain with him. He did see Mr Taylor—ascertained that it was all right, all proper; and then, he says, he did subsequently make an agreement with Henry P. Hubbell to buy that judgment. Then, if Taylor only made *but one* assignment to Levi Blossom, and to this he testifies, then the assignment before the Court is *the* assignment that was made. It appears that this assignment was made in the handwriting of Judge Hubbell. Well, then, he bought that judgment, and made that agreement with Taylor, as he swears; of this there is no doubt. Judge Hubbell admitted, when the witness was interrogated upon the stand, that he bought it, paid some money, some in shape of a check, and gave Taylor his note for the balance. Taylor swears to the same facts. Taylor then sold to the Judge and received his pay for it. This sale was not fictitious, but real, all done in proper manner and form. There was no coverring up about this, as there was about the mortgages, as Taylor contends. It was an absolute sale for a fair and valuable consideration to the respondent, and the respondent *did take* an assignment of the judgment, not to himself but to Levi Blossom. Well, Blossom's testimony explains how that came about. He testifies that when he proposed to buy it, he suggested to Henry P. Hubbell that he should go and get the assignment made to him directly from Mr. Taylor. Upon Henry P. Hubbell's showing him the assignment he had, Mr. Ryan asked him why he preferred an assignment directly from Taylor? He said he did not know any reason, only that he wished to avoid numerous entries; it was a way he had of doing business. It is all explained, all reasonable, all right enough. Judge Hubbell owned the judgment; there is no doubt about that. He bought it of Taylor, and paid his money for it. Henry P. Hubbell negotiated with Blossom, and made the trade. He did sell Blossom the judgment on behalf of Judge Hubbell, or for himself as owner, although Blossom did not at the time know that Judge Hubbell had any interest or hand in it. And, in fact, he had not; but if he had, he knew of the sale to Blossom—he wrote the assignment to Blossom, to perfect the contract of sale to him by H. P. Hubbell. If the Judge was the owner, he would be estoped to set up any right to the judgment, knowing, as he did, the sale by H. P. Hubbell.

Blossom by paying his money for the judgment, having no knowledge that the Judge had any interest in it, could hold it, for the reason, if for no

other, that the assignment came to him in the hand writing of Judge Hubbell. Therefore, he could not possibly set up any claim afterwards as against Levi Blossom, all title that he ever had either as *cestui que trust*, or absolute owner was forever passed. The truth then obviously is that he had no interest in the judgment after that assignment had passed into the hands of Levi Blossom. Whatever he permitted his agent to do, although he did not disclose his name as principal, was binding upon him. If H. P. Hubbell owned the judgment he could of course sell it as he did. Then in either case Levi Blossom was the absolute owner of that judgment at the time he filed his "creditor's bill." The testimony shows that it absolutely passed from H. P. Hubbell, or Judge Hubbell, to Levi Blossom. Henry P. Hubbell was owing him he thinks, three hundred dollars. He paid him some two hundred and fifty in cash, and the balance of the $850, which was $300, he was to pay in a few days. It was left in that condition. It was understood between them that whenever Henry P. Hubbell wanted $100 or $200 he could draw upon him and get it. He testifies that his word is good in Milwaukee for that amount when doing business in that way, as he frequently does—at any rate he did that business in that way. He says he owned that judgment until after Judge Hubbell modified that injunction. Then I ask whether they have sustained the allegation that it was assigned to Blossom for the use and benefit of Levi Hubbell. Very far from it. The very reverse of the charge is established by the proof. Yes, Mr. President, the evidence does show that the title to that judgment passed absolutely to Levi Blossom, and that he had the only and sole title at the time of filing that bill, and at the time Judge Hubbell modified that injunction. Then so far as dissolving that injunction is concerned, the testimony shows that he had no interest in that cause, and the gentleman with all his ingenuity, will not be able to overcome it.

Well, they say that he "*refused* to *dissolve*" that injunction. That, however, is mere inference, from the fact that he merely modified, instead of dissolving it. It appears that Judge Hubbell modified that injunction, in exact accordance with the wishes of the City of Milwaukee, as expressed in a resolution adopted by the Common Council. They had passed this resolution in relation to that matter, directing how they wanted that injunction disposed of, and Judge Hubbell modified the injunction so as to meet their wishes precisely. They were the defendants, and being the defendants, if Judge Hubbell had any interest in that matter, most unquestionably it was directly opposed to theirs, and of course, a dissolution or modification of that injunction was against his interest. Now it is very singular, that a corrupt man will do a thing against his interest. That is somewhat singular most certainly, but that he will do it for his own benefit and interest, is quite obvious.—That modification is just what the City wanted. It enabled them to do all that they wished to do—that is, to receive payment for taxes. They wanted to collect the taxes that were due them, and did not want to be tied up, so that it could not be done. We have seen that that injunction was granted by a Court Commissioner, and that Judge Hubbell did modify it, so as to meet the wishes of the defendant, and if he had any interest, I say his own act, must have been against himself. That he would act against himself, is a conclusion we are not at liberty to draw from the experience we have of mankind. The evidence, I assert, shows conclusively, and beyond all earthly doubt, either that Judge Hubbell had no interest in that

judgment after the assignment, or else that Levi Blossom has committed wilful and corrupt perjury. In order to convict Judge Hubbell upon this charge, you must take the ground that Levi Blossom has committed black-hearted perjury, and I am disposed to put his testimony against the testimony of Taylor. I suppose that so far as Taylor testifies in relation to this specification, his testimony may all be true, and yet Blossom's be true also. I suppose Taylor's testimony in relation to his integrity, has really nothing to do with this case, except that he is not entitled to so much credit as many other witnesses are, upon this stand.

That he did sell that judgment to Judge Hubbell, and did assign it to Levi Blossom, there can be no doubt; but in the mean time a trade had been made, by which Blossom became the purchaser of that judgment, and all the title Judge Hubbell had passed to Blossom. It had all ceased perfectly as to Judge Hubbell. The witness testifies to it, Judge Hubbell admits it, and what more is required. That judgment then, was sold to Blossom by Henry P. Hubbell. After Blossom had become the sole, absolute owner of this judgment, it appears that he addressed a note to the common council, informing that body that he had become the owner, and that he wished it paid. He received for answer, that he was owing the city his taxes, and that if he would set his judgment against the taxes, the city would square accounts any day.

Blossom thought he was treated very badly, inasmuch as he then had a large amount—some thousands of dollars of city orders in his safe. He was indignant, and swore that he would never take anything from the city but money, in payment of that judgment, that he would have the money, if it could be obtained. He thereupon got Mr. Watkins to file his bill and obtain the injunction against the city. After all this, and after the adoption by the common council of the before named resolution, the city, through its attorneys, made a motion to dissolve the injunction, and the Judge, although he did not in terms dissolve the injunction, yet, he modified it so as to meet the wishes of the city, as before remarked.

Blossom took this act of the Judge somewhat in "high dudgeon," to use a common place expression—went to his counsel—swore about it—Mr. Watkins told him that he was interested—that he was mad, and could judge as well of the legality of the act as the Judge. *Then*, as he had sworn that he would never take anything but money of the city, in payment of the judgment, and as he saw no chance of getting that, and as some of the city officers had, in the mean time, proffered him a city bond of $1200, in discharge of the judgment; he went to H. P. Hubbell, and proffered to sell him back the judgment, telling him of the offer of the bond. And thereupon he did make an agreement with Henry P. Hubbell—and I care not if you say with Judge Hubbell—to let him have the bond of $1200, that the city proposed to give him, in satisfaction of his judgment, which was some little over $1000. The city proposed to give him that bond, and he told them, if he concluded to take it he would want two $500 bonds and one $200 bond, but he says as he had sworn he would never take it, he went to H. P. Hubbell, and made a trade with him to take back the judgment, and receive the bonds; which Henry P. Hubbell did do, paying Blossom something like $50 for his trouble in the arrangement; and Blossom subsequently gave directions to the city, to let Henry P. Hubbell have that bond.

Henry P. Hubbell subsequently, and after he raised the money to pay for the judgment got the bond and disposed of it. He bought that bond, and subsequently sold it to Judge Hubbell, or else he bought it for the Judge and by his direction. The Judge either raised the money in the first instance or he got H. P. Hubbell to advance it for him, because Blossom said he must be paid for it immediately. Now Judge Hubbell did have that bond. He bought it upon his own account of Blossom, through H. P. Hubbell, or he subsequently bought it of Henry P. Hubbell. It is immaterial how that was, so that he became the purchaser after the modification of the injunction. Having bought the bond I suppose he had a right to do what he pleased with it. I have yet to learn that Judge Hubbell, or any other Judge, has not a right to buy a bond, a promissory note, a horse, or any thing he pleases. This testimony shows that the transaction was all right and proper, and it shows no improper act on the part of Judge Hubbell from begining to end. Then I say it is not necessary to consider the collateral matters in relation to which Mr. Taylor has been interrogated; because this Court is to divest itself of collateral matter. This Court is bound to come to the direct questions in issue in this case, to take the evidence which is applicable to the case, and take none other, except for the purpose of ascertaining whether a witness is entitled to credit or not, and in some respects that testimony is applicable to the main facts. The next specification is in relation to the note of Joseph O. Humble. And on this specification, the point in issue is whether or not the respondent was pecuniarly interested in the subject matter of the suit when he modified the injunction, and whether or not in that act he acted corruptly. There is nothing else demanding an adjudication by this Court.

The charge here is essentially this:—that Judge Hubbell was the owner of a certain note against Humble, the maker of it; that he passed that note over to Mr. Graham, still being the owner of the note; that Graham commenced an action upon it in the Circuit Court of Milwaukee County, in which the respondent was Judge; and that subsequently a judgment was rendered in that case in favor of Graham, the nominal plaintiff, and against the defendant Humble.

What is the proof in *this* case. It is that Judge Hubbell passed over this note to Mr. Graham; that he advanced some money upon that note to Judge Hubbell; that he commenced an action in the Circuit Court of Milwaukee county, as is alleged in this specification, in his own name. It is also in evidence that Mr. Finch filed a motion to sit aside the return of the officer upon summons issued in the case; and that Mr. Graham interposed a counter motion in order to allow the officer to amend his return; that when that matter came before the Court for consideration, Judge Hubbell remarked in substance that he had some interest he believed in that case, and he should have to send it away. This transpired in 1849; and it would be very singular if these witnesses could recollect the precise language of Judge Hubbell upon that occasion after this lapse of time; but they recollect enough to show that Judge Hubbell did offer to send it away, because he was interested in the case. Whether he was aware of the statute in force at that time, I know not, but his sense of the common law told him he could not sit and adjudicate in the case; therefore he very properly proposed to send it away. Mr. Finch says to him:—you need not do that. Graham says that Finch said he need not send the case away, that he was going to withdraw his appearance. Finch says he did not intend to consent to any thing.

But Mr. Graham says, that the remark Mr. Finch made, was that the judge *need not send it away*, because he should withdraw his appearance." Mr. raham then suggested to him, that if he withdrew his appearance, he should ithdraw the motion he had filed; which he did. There was then an entire ithdrawal of appearance by the defendant in the case. What then was there quiring an adjudication, or determination by Judge Hubbell in relation to iat matter. Certainly, he did not "*hear and determine*" that cause. What ien was done. Why, they took a default, as a matter of course, just what the w would authorize them to do in any court. It was referred to the clerk to ssess the damages under the statute. He reported the amount due. It was matter of course, proceeding to final judgment. The judgment finally pronounced upon that proceeding was the judgment of the law, without any determination by Judge Hubbell. Now, what is the meaning of this statute? t becomes material to consider it. This is the section of the statute relied ipon : " In case the judge of the Circuit Court shall be interested in any cause r causes pending in such court, or shall have acted as attorney solicitor, or ounsel, for either of the parties thereto, the said judge shall not have power to iear and determine such cause or causes, except by consent of the parties thereo; and upon motion, the said judge shall order a change of venue to an adoining circuit, and the judge of said circuit shall hear and determine said cause or causes."

This is in the act which provided for the election of circuit judges, soon after the formation of the state government. That act makes provision for the election of judges, for the organization of courts, and for the passing over of the causes then pending in the district courts at the time of the formation of the government, or at the time this act went into effect. They then proceed, and make this provision, which I have just read. What is the meaning of this term "*pending*"? Pending where? Why pending in the circuit courts. Was it *then* pending, or was it a case that *would be* pending in future? Why use the language " or shall *have acted* as attorney, solicitor, or counsel for either of the parties thereto;" that is, in the cause or causes *then* pending, and, of course, by transfer under that act. Does this language apply to causes in which the Judge *had* acted as counsel, or to causes in which he might engage in thereafter. It was very proper to pass this particular provision.

Legislators might well anticipate that the judges to be elected under that act, would very likely be men who had been practising at the bar, and that cases in which they had acted as counsel, would by this very act pass to the circuit courts for trial; and, therefore, it was proper, if not necessary, to make some provision relative thereto.

So far as the interest of the Judge is concerned, it is no more than a declaration of the common law principle. A judge could not by common law, sit and decide his own cause. Therefore in *this*, this portion of the section is merely affirmatory of the common law. But it goes on further, and extends to cases where he shall "*have acted* as attorney, solicitor, or counsel," for parties thereto, that is, in causes pending in the court. That is it. There must be a *cause*, to the end that there may be parties; and *these* causes *pending* in the court, if he had acted as counsel for either of the parties thereto, then there is an inhibition. So far as the matter of interest is concerned, it is, as I have before said, unquestionably nothing more than declaring a principle which ex-

isted before by the common law of the land. In relation to this statute, so far as it requires the consent to be in writing, it has been repealed; and although it has been confidently relied upon, it is of no avail, for with its repeal fell all penalties, or right of prosecution for violations of its provisions. This principle of law is well settled. It is contended, however, that this matter of consent must be in writing; and that unless there was a written consent, that then, as a matter of course, the respondent is guilty of corrupt conduct in office. I say, subsequent legislation has done away with that section, so far as it required that consent to be in writing, although not in words, repealing it, yet according to well settled principles of law it becomes a repeal by implication. What is the meaning of the words, "*power to hear and determine*"? I suppose it means that the court shall not have power to try the cause.

Does any person suppose, that hearing and determining by the Court, means anything else than trying the cause. Let us see what is the meaning of "trial of a cause." That has some meaning. It has a meaning in law; and this Court, like all courts sits here to determine and administer the laws. As a Court, it cannot make laws, but it must administer the laws. I read from Bouvier's Law Dictionary, 2d vol.: word—"trial." The definition is, "an examination before a competent tribunal, to ascertain the *facts*, for the purpose of determining such issues. Now if this is a trial, then it is quite clear that *to try*, means "*an examination ascertaining the facts*, and actually *determining* such issues by such '*competent tribunal.*'" In support of this definition Bouvier cites, 4th Mason's Reports, 232.

By examination of that case it will be ascertained that the question was very elaborately discussed at the bar, and carefully examined by the Court. Now then, there must be an *issue of fact*, in order that there may be a trial within the meaning of the law; and "to hear and determine" means nothing more than *to try*. Many law writers have considered this question. Some have supposed that it was the determination of any matter put in issue whether by demurrer or otherwise. Some of them have supposed that it meant something else; but it is now, and it has been for some years, the understanding of the profession, and of Courts, as I have read from Bouvier. There must then be *an issue*, and according to this authority, it must be an issue of fact, in other words, the fact must be put in issue. Now, a demurrer admits all the facts stated, but admitting the facts as stated, the demurrant denies their insufficiency in law, to maintain the action, as the defence set up in the plea. But it is laid down by this author, that a trial is an examination before a competent tribunal to ascertain *the facts*, for the purpose of determining such issue, and "*such issue*," is an issue of fact, as we have already seen.

Then I say, that in this case, it is apparrent that Judge Hubbell did not determine this matter in any way. There was no issue of fact, or of law. There was no discretion vested in him, concerning it. The statute pointed out the course the parties had to take. He had nothing to decide as to whether any evidence was admissible, or not admissible. He merely sat there as a Court, and the proceedings went on as a matter of course, without any adjudication by him. I say that he, or any other Judge, has a right to do this much, without question. The *law* does that business, the parties use the machinery of the Court.—It is not a question under adjudication by the Court. But suppose that I am wrong about this; or that Judge Hubbell was wrong; is there any

evidence to show that he was corrupt, or had any corrupt motive, or corrupt intention. I say no, because he proposed to send it away, and when Finch proposed to withdraw his appearance and did so, he nor any one present, thought anything further about it. The usual routine was gone through in such cases. I see no improper motive, even though it be admitted that the Judge was mistaken upon the rule of law which I have undertaken to lay down, and as I think, correctly, upon the authorities. That disposes, then, I apprehend, most completely, of the Humble judgment, so far as the proceedings were concerned, up to judgment.

I propose to consider the next specification, which is the third of the second article. According to this specification, and the proof in the case, it is apparent that a writ of *fieri facias* had issued upon the judgment mentioned in the last preceding specification, and that certain real estate of Joseph O. Humble as described in a mortgage owned by Miller, made previous to this judgment, was sold, and that Henry P. Hubbell became the purchaser; and although it is very doubtful from the testimony, whether the Court could possibly infer that Judge Hubbell was any longer interested in that judgment, yet admitting that Judge Hubbell was the owner; was Henry P. Hubbell the purchaser? that is conceded.—Then I say, testimony does not show that the Judge has done any improper act, because upon the sale of this property, by virtue of the *fi. fa.*, and it being bid in by Henry P. Hubbell, either for himself or for Judge Hubbell to the full extent of the judgment, the judgment became satisfied, and discharged. That extinguished the interest of Judge Hubbell in the judgment. Whether it was bid in by Henry P. Hubbell, for himself or for Judge Hubbell, is quite immaterial.—Henry P. Hubbell became the purchaser; that is the evidence, but that is quite immaterial. The point is, that the interest of Judge Hubbell ceased in that judgment, by the sale of this real estate. Upon that sale, this judgment was satisfied, and his interest therein forever extinguished. No principle of law, is better settled than this. Subsequently it appears that one Wm. Y. Miller, filed a bill in chancery, to foreclose a mortgage executed by Joseph O. Humble, previous to the time when the judgment in the name of Graham was docketed. Then, this mortgage was a prior incumbrance. In that cause, Mr. Miller made Humble, whom I understand was the sole mortgager, except, perhaps his wife, and Mr. Downer, parties defendant. Neither Henry P. Hubbell, nor Levi Hubbell, were made parties defendant. I think I am right in that.

Mr. Ryan. That is so.

Mr. Knowlton. Then I say, that Henry P. Hubbell was not, neither was Judge Hubbell made a defendant in the foreclosure proceeding, and as a matter of course, Miller was the sole complainant. They were not made parties to that suit at all. I shall subsequently examine whether the interests of Judge Hubbell became affected by any thing that was done in the foreclosure suit. This foreclosure sale took place at a time, prior to the day when the time would expire, for the redemption of the premises by Humble on the execution sale. Before a deed passed from the sheriff, and before the purchaser was entitled to a deed, this foreclosure sale took place. Then Henry P. Hubbell, as purchaser of this property—or Levi Hubbell, whichever you please—held this sheriff's certificate. Now, what was the right in this property, that wasbought in by Henry P. Hubbell, at the time of the execution sale? It was the equity of redemption, nothing more, nothing less; that is to say, all and singular, the interests

that Mr. Humble had in the premises at that time, having been previou mortgaged to Miller, who received the mortgage money on the foreclosure sa I say then, that the interest of Joseph O. Humble was divested at the tim of the sale, on the *fi. fa.* That interest was completely divested by the sale upo that execution. Then, at the time this foreclosure proceeding was going on, this individual, Humble, had no interest in the premises at all; and the only reason why it was necessary to make him a party defendant, was to show, if he could, that he had paid the mortgage debt, or some portion of it; because, as already observed, so far as his interest in the premises was concerned, it had entirely passed out of him. And why? Because he was the real defendant, named in the record, in the Graham suit. By the judgment rendered against him he was bound. I say also, that in that foreclosure suit, Graham had no legal interest, nor had he any in the mortgaged premises, none that he could enforce, and none that he could ask for. Humble had no interest in the premises at all, and it was only necessary to make him a party, for the purpose of obtaining a decree against him, that he should pay the balance that might remain unpaid, if any there should be, after a sale under the decree. So far as the premises were concerned, he had no title, no interest. Graham too, had none, because he was the plaintiff nominally, in the suit at law against Humble, and he did not purchase the property sold on the *fi. fa.;* but H. P. Hubbell did, and thereby fully satisfied the judgment. Henry P. Hubbell was the actual purchaser, or he held it in trust for somebody else. Miller did not, as before said, make Henry P. Hubbell a party, who must have been a party in interest, or else nobody had any of which we have any evidence at all. If that is so, then does this decree of foreclosure affect his interest, or that of his *cestui que trust*, if any he had. The persons who are not made parties to a suit in equity, are not bound by the decree made therein, unless they are parties. This principle of law is so well settled, that it would be a useless waste of time to dwell upon it. Well, this equity of redemption was in Henry P. Hubbell, or else in Judge Hubbell. Why, then, were they not made parties to this case? Downer, who was made a party on account of a judgment which he had bought, and was also a prior lien upon the mortgaged land, (who, by the way, was the only defendant who appeared in that case) had a right to insist upon having that suit tried before Judge Hubbell, and the Judge had not the power to send the case away. Downer and the complainant were the only persons who took part in the suit, and they both, proceeding to a decree without objection before Judge Hubbell, are *conclusively* presumed to have consented to have him try the cause. I do say, that Judge Hubbell, if he was interested in that matter, was bound to send it away, whether the statute required it or not. He, or Henry P. Hubbell, had the certificate of the sheriff, as to the sale of the mortgaged land—if you please—upon which the foreclosure decree might operate. In that particular suit, he thereby, nor otherwise, had any interest whatsoever. It was *only in the thing upon* which the decree, in that case, *might operate*, that he was interested, if at all. Very well, Mr. Downer testifies, and so does Mr. Finch also, that he, Mr. Finch, was the counsel, or solicitor, for the plaintiff, Miller. Downer testifies, that he was the only defendant, who put in an answer, or made any appearance, and that he admitted the facts set up in the bill, and asked the protection of the Court, in the premises, by reason of the judgment assigned to him. He did not put *anything whatever in issue.* Then so far as the balance

was concerned, there was no appearance. The matter of the bill was taken as confessed, and in relation to Mr. Downer, Finch did not object. He says the proceedings were carried on regularly. He had no fault to find, but what the sale was properly conducted, as was also all the previous proceedings. They consented to the sale. Nobody was injured; and if Judge Hubbell had an interest, even in that suit which would divest him of his right to try it, it was very singular *indeed*, that he made, as he did, a decree which cut him off entirely. If, in this he was corrupt, it must be acknowledged that it is a very singular species of corruption.

AFTERNOON SESSION.

Mr. KNOWLTON. At the adjournment of the Court this morning, I was discussing the 3d specification of article 2. I had assumed the position that as neither Henry P. Hubbell nor Judge Hubbell were made parties to that bill, that they had no interest in the case as presented to the Court, because if they had an interest, it must be represented and the decree as a matter of course, must have been such as they would be bound by; that the interest the Judge had, if he stood in the place of Henry P. Hubbell, was the holding the sheriff's certificate upon the execution sale; and that if that amounted to an interest, that it was of a contingent character, and was only in the property upon which the decree could operate; and that Mr. Humble had no legal interest in the premises at the time of the foreclosure suit. I propose to read an authority in order to sustain myself in that position. I read from the 5th of Cowen, 162, and I only read it for the purpose of showing that the interest of Humble had entirely passed from him, so that he had no remaining legal interest.—The title of this case is Van Alstine vs. Wimple. The action was assumpsit, for land bargained and sold by the plaintiff to the defendant. On the trial the plaintiff proved that about 30 acres of land belonging to him, was on the 25th of September, 1815, sold at sheriff's sale, on a *fi. fa.* against him, upon a judgment in favor of one Hopkins, to one Olcott, on a bid of $42. That after the sale, but before Olcott had taken a deed from the sheriff, it was verbally agreed between the plaintiff and defendant, with Olcott's assent, that he should relinquish his purchase to the defendant, that he should however, take his deed from the sheriff, and then convey to the defendant; who agreed to pay the plaintiff $600, of which he paid $200 down. The plaintiff was to have two years within which to redeem the land, by re-paying the $200 with interest; but if this was not done, then the defendant agreed to pay the plaintiff the remaining $400.—Shortly after, the sheriff conveyed to Olcott, who conveyed to the defendant, pursuant to this arrangement; and the defendant afterwards, in April, 1817, sold and conveyed 16 acres of the land to one Vanduzen, for $600. The plaintiff never redeemed or offered to redeem the land; but brought this action for the $400, and interest. After the suit was commenced, the defendant acknowledged the debt.

It will be seen that here was an agreement made between the defendant and the owner of the land; the plaintiff who was the defendant in the execution, whereby the defendant Wimple agreed to pay Van Alstine, the plaintiff, the sum of $600, for the land which had been sold on a *fi. fa.* issued on a judgment against the plaintiff. The land was purchased on the sale by one Olcott.—Olcott assented to the agreement by which he was to relinquish his purchase to

the defendant—take a deed from the sheriff, and then convey to the defendant, which deed from the sheriff he received, and subsequently conveyed the land to the defendant according to the agreement. The defendant was to and did pay $200 down, the remaining $ 00, was to be paid after the lapse of two years, in case the plaintiff did not redeem, which he was at liberty to do within that time, but did not do so. There appears to have been strong equity in favor of the plaintiff.

The defendant got the land pursuant to the arrangement, and subsequently sold a trifle more than one half thereof for the full sum of $600, and yet the court held that the plaintiff was not entitled to recover the $400, for the *reason that at the time* the agreement relied on was made, *he had no interest in the land*, the same having been previously sold on execution against him.—On this point I read from the opinion of the Court, by Sutherland, Judge. He says: —"But I am also inclined to think, that there was no consideration to suppose the promise of the defendant, to pay the plaintiff the $600, for the land; and that on this ground he is not entitled to recover. If the legal effort and character of the transaction be the same as though the defendant had been the purchaser at the sheriff's sale instead of Olcott, to whose rights he succeeded, which appears to me to be the case, then it seems to me very clear, that the defendant's agreement was without consideration. If the sheriff's deed had been executed and delivered, it will at once be conceded that there would have been no consideration for the promise. And the fact that the naked fee remained in the plaintiff until the deed was executed, does not, in my judgment, alter the case, (2 Caines, 63. 2 John, 248.)—All his beneficial interest in the land was gone."

But it shows this; that Humble himself had no interest in the premises at the time of this foreclosure proceeding. If, however, he had, the bill was filed against him, and, as a matter of course, he should have appeared and defended; but he allowed that bill to be taken as confessed against him. He did not take any issue. There was nothing to try. It was a matter of course proceeding to take a decree against him. It required no adjudication, so far as that was concerned, from Judge Hubbell. The same result must have followed in any Court whenever it could not have been avoided—the law gave it—no court could withhold it. If, then, Henry P. Hubbell was the purchaser, as it appears he was upon this sale upon the execution, it is quite obvious, if he could be made a defendant, and that he must have been, as his rights were not affected by the decree. And, as I have before said, there is no principle better settled than that a person cannot be affected by a decree, unless he is made a party to the case; or unless it be some person who has purchased pending the suit, and whose vendor is made a party, by means of which he would be bound. That is not this case however.

Now, I pretend to say, that there is no evidence here to warrant the conclusion legitimately, that Judge Hubbell did buy this property upon this decretal sale. I say, the evidence is not sufficient to establish that fact upon legal principles, because it is a well-known rule that the fact proposed to be established must be established by legitimate evidence, to the exclusion *of every other hypothesis*, because if any other hypothesis be true, the one they undertake to establish is not, or *may not* be true, and *is not*, therefore, properly established. But I will suppose that Levi Hubbell did buy this property upon that decretal

sale, so far as this interest was concerned; yet, nevertheless, it is apparent that Judge Hubbell could not be bound at all by this proceeding. Now, what is the act complained of? Not that he improperly rendered this decree. It is not said that he did not render this decree properly; but it is contended that after the decree was made, without any complaint, he made an order confirming the sale. Well, in the first place, we will inquire and see whether it was necessary to confirm this sale, because if he did an act which, in law, is not necessary, it amounts to nothing. I read from the Revised Statutes, page 424, sections 82, 83:

"All sales of mortgaged premises under the decree of the court, shall be made by the sheriff, in the county where the premises, or some part of them, are situated, unless otherwise directed in the decree of sale."

"Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee, if the equity of redemption had been foreclosed; and such deeds shall be as valid as if the same were executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all claiming under such heirs."

Now, I say, it was unnecessary to confirm a sale under this statute. This is a question which has not been frequently raised. I remember distinctly raising this question, in opposition to a motion to open the biddings and order a resale in Iowa county; and Judge Cothern held that it was not necessary under that statute to confirm a sale at all. In that he was warranted by decisions upon similar statutes in New York. I apprehend, then, that the Court was not called upon to confirm the sale in this instance. That "*deed shall operate as an entire bar*," says the statute We want no stronger language than that. Then, the confirming of that sale was a mere work of supererogation, and amounts to nothing in law. Then, as to the payment of the surplus money; it seems that the mortgage debt was some $1200 which had to be raised; and as Henry P. Hubbell had purchased it upon the execution sale, and as the Downer judgment, and the primary mortgage, were liens upon the property, it became necessary, in order to save that interest, to bid the property off, or run it up sufficiently to pay the execution sale, and also the mortgage and debt of Downer, which was included in the decree. It is from the fact, that Judge Hubbell did raise this large sum of money for the purpose of having this property bid off, or because he told somebody to bid upon the property, that they infer that it was purchased for the benefit of Levi Hubbell. It might also be true, that Henry P. Hubbell bid it in for himself. Then some hypothesis may be true, other than the one proposed to be established, consequently they do not bring themselves within the rule of law.

Well, suppose this sale, or purchase, by Henry P. Hubbell upon the foreclosure sale, was for Judge Hubbell, then, I ask, what is the legal condition of the parties at that time. Now, it appears that there was some $93 bid over and above what was necessary to discharge the judgment held by Downer, and the money due upon the mortgage, then, if Henry P. Hubbell stood in the place of Judge Hubbell, they were under no obligation to pay over the surplus money nominally due upon the sale; because a person bidding in property upon a sale, made on a judgment or decree in his own favor, is under no obligations

to pay over the money to the officer making the sale, unless there are conflicting executions or decretal sales; and this is so, even though the sheriff is commanded by the writ to have the money in court before, or on a particular given day. Under a statute similar to ours, in New York, the supreme court of that State held that money need not be paid to the sheriff when the property was bid off by the judgment creditor; excepting cases, of course, where there were conflicting execution. It was unnecessary then to pay the surplus money in court in this case; and if paid in by H. P. Hubbell, he had a right to take it out of the hands of the clerk without any order whatever. And to this, I wish to read an authority, 5 Cowen, 396. I do not intend to take up the time of the Court in reading the whole opinion, but will proceed at once to read that portion which has an application to this particular point. "The only remaining question (say the court) is, whether the sheriff is entitled to recover the value of the mare from the plaintiff in error; though the latter is entitled to receive the *same* money from the sheriff at the moment of its payment. The answer seems to be *cui bono*? Since the plaintiff is entitled to the money, *why compel him to pay it?* Why should he do this, when he may turn round and sue the sheriff for it?

"The general rule undoubtedly is, that the *sheriff must sell* for cash; but the court, in Nichols vs. Ketchum, (19 John. 92,) 'say it would be *unreasonable* and injurious to debtors as well as creditors, to insist that the creditor on the execution should advance money on his bid, when the sole object of the sale is to put money in his pocket, by paying a debt due him.'" The Court then proceed with the opinion as to the rule when there are conflicting executions, in such case the Court say that the money bid must be paid over.

That is not the case here. H. P. Hubbell had a right to that money—an absolute right. He could have retained it, and was under no obligations to pay it over unless he had a surplus of more than the amount, for which he had bid the property off at the previous sheriff's sale; and then, who would it go to? But that was not the case. This inquiry need not here be answered. Out of some $300, for which he bid the property in to satisfy his claim, it appears that the enormous sum of $93 passed into his hands, or into the hands of Judge Hubbell, if you will. I have, then, undertaken to show that the conduct of Judge Hubbell was warranted, in all respects by the law of the land, and I think I have succeeded. But we will now suppose that I have not succeeded in my attempt. Suppose that Judge Hubbell was mistaken in relation to his rights in this case, or of his rightful power to act, and do what he did do. Suppose he was mistaken. Is there any evidence which shows that his conduct was corrupt—that by his acts he has committed any crime. That is the question for the consideration of this Court—and not whether he was absolutely authorized in doing what he did do; that is quite immaterial on this trial and in this Court. If he was not right, and *did not* act from corrupt motives, I say he is not amenable to any earthly tribunal. What evidence have we on that subject.

In the first place, we have Mr. Downer, the only man who answers to the bill. No objection is made on his part, to Judge Hubbell's sitting in that case. He was not afraid of trusting his rights to Judge Hubbell. Mr. Finch was willing on the part of the complainant, and they were both cognizant of the fact, and both then supposed that he was really the owner of the sheriff's certificate

which was in the hands of H. P. Hubbell, or of Judge Hubbell. I ask, with this knowledge then before them, how it is that they should go on, when they were aware that a decree confirming the sale, would be an absolute nullity, if that made him interested in the suit. If Judge Hubbell supposed he was doing an improper or illegal act, and one not warranted by law; how is it, that in open Court, in the face and eyes of Finch and Downer, he should proceed in the manner in which he did, if he was corrupt? Did ever any human being discover that a corrupt man was so open in his conduct, that he should place the evidence upon the almost imperishable records of a Court, before a thousand people perhaps, and thus promulgate his conduct to the world, and for which he could be convicted upon an impeachment? He must be the most silly and fool-hardy of all men, or he must be the most confirmed in wickedness. I say, any man, if he will do a thing of that kind, must be the weakest of all men, or he must be disposed to regard his position, his happiness, his reputation, of all men in existence, of the least worth and importance. But the fact is, *no man* is disposed to disregard his position in this world so much, as to do an act of that kind, and place it upon the records of a Court, and that too, in the presence of hundreds, or thousands of people. That alone, in my judgment, negatives the idea, that he supposed he was doing an act in which there was the least impropriety. I say then, that the intention to do wrong is not established. Although, for argument sake, I might concede that he may have been mistaken, or was wrong in his course; yet, it is quite obvious that he had no improper object in view, and it is for that, if for anything, that his conduct must be pronounced corrupt. You may even act on the position that counsel have already assumed in this case—that you are to infer the corrupt intent from the act itself. Then, I say, that circumstances surrounding that act rebut the presumption, that the gentleman would raise from the act done, or committed. Will any one of the learned Managers, or their counsel, maintain that if they had a corrupt motive in their hearts, that they would do the wrongful act before hundreds of people; and not only do it, so that it could be proved by them, but go further and place it upon the records of a Court? Would they act in that unheard of manner? I ask then, whether it can seriously be believed, that the respondent was so great a fool as to do it—and I must say he was a fool if he did do it. It is upon no other hypothesis that you can account for that kind of conduct. It is worthy of being remembered, that fools and weak men are seldom scoundrels. Another circumstance in connection with this matter, which shows that Judge Hubbell acted from the purest motives, is, that in making that decree, he foreclosed all the rights and equities that might exist in him, as the subsequent execution creditor. That decree, I say, cut him out of all the rights he had. He could make an order then as well as any other judge. Again, I say, he had no improper motives—none earthly—and every man, unless he has had his mind prejudiced, by some outside pressure, must come to the conclusion to which all men ordinarily come from the facts. I know that men at times form opinions upon very weak evidence, and that they sometimes form opinions at variance with what they would ordinarily form; but, I say, they could not sit down and disarm themselves of prejudice, and by any possibility arrive at the conclusion, that Judge Hubbell had any corrupt motives, or that he supposed for one moment he was doing wrong. He was doing all the parties litigant asked in any event; and when they got what they asked, they got all

the law gave them. Before no Court could they legally have demanded more than was granted; and although no complaint comes from anybody interested in that suit, yet a complaint does come, and from one too, who possesses a spirit of deep revenge against Judge Hubbell; and the matter is placed before this Court for trial. That is the way in which this case is presented for the consideration of this Court. It, of course, matters not who has put it in motion, and who has kept it in motion, until it has reached the bar of this Court. It comes, and with it the assertion, that the Judge in that act was corrupt.

Mr. President, if that is corruption, again I say give me corruption; and let the gentlemen have *their* virtue. That is the kind of corruption I want; if that is corruption, they may run off with all their virtue.

Mr. President, I have said all that I consider necessary upon this, as well as upon the other specifications to which I have alluded. I wish to be as brief as possible upon all the charges to which I direct my attention; but from the "marking" of the various specifications, I can very well anticipate that they propose to notice every thing and probably a *little* more; and go outside of them, and reason from cause to effect, and by analogy upon various things not in the specifications. Nevertheless I may be wrong. I drew the conclusion from the fact that there is such an utter absence of evidence to sustain this charge, that it is insulting to common sense to entertain the idea that it is sustained.

I now proceed to the third article. That is the celebrated Haney case, which went the rounds of the papers during the last judicial canvass in this circuit. And what is the charge? It is that one James M Haney, having been indicted. [Mr. Knowlton read the indictment.]

This is an indictment containing an ordinary allegation of making an assault without any weapon whatever. It is in the ordinary language of an action of trespass, leaving out the "*peace of God* and the State of Wisconsin"—and that does not amount to a great deal, because God disturbs but few men. The allegation is that he made an assault, and then it stops, so far as the charge of making an assault is concerned; and then it goes on to say: and the said James M. Haney, then and there being armed, &c., did shoot at the said Thomas Arland, with intent, &c.

Now, Mr. President, on that indictment we understand one thing distinctly, and that is, that the jury recommended the prisoner to the mercy of the Court. The Court will understand another thing, and that is, that a question arose upon the motion in arrest of judgment, as to whether the indictment was an indictment under the 35th section of chapter 133, which reads as follows:

"If any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year."

Now it is contended that this indictment is drawn under that section. This question was discussed, as appears from the evidence before the Court, upon the motion in arrest of judgment. The counsel in that case upon the part of the accused was forced to contend that that indictment was good for nothing under that section, and under no section, that is so far as any punishment was defined and provided for in the statute. They also particularly contended that it was not good under the 32d section of this same chapter.

It is true that the late District Attorney of this county, and the prospective attorney general of this State, thought otherwise in regard to this matter. It

is very common, however, for men to think well of his own bantlings, lest no one should think that the thing which he has ushered into existence was of any particular account. Well, it is doubtful to me whether Mr. District Attorney ever will see anything of that so far as this indictment is concerned. He says very promptly that he had no doubt but that Haney must be sentenced, if sentenced at all, under the 35th section. His mind was perfectly fixed at, and prior to the time when Haney was sentenced. But, Mr. President, it so happens that his opinion is not to guide this Court; in that respect we are fortunate.

It will be noticed that this section of the statute is framed in a very singular manner, and it becomes material in order to get at the intention of the legislature, to examine the preceding sections as well as subsequent ones, that we may see whether Mr. District Attorney is right in his construction or not. Suppose the indictment is construed as containing a charge, that "being armed with a dangerous weapon, he made an assault," &c., with *intent* to murder, &c.—if that is conceeded to be stated, then it becomes material to examine this statute to see whether that indictment would then be within the 35th section. I maintain it would not. It is necessary to charge that being armed with a dangerous weapon, he made an assault with intent to *rob and to murder;* or with *intent to rob or murder*. The copulative "and," and the disjunction "or," are to be construed alike—as meaning the same thing. This is common in the construction of Statutes, where the intent seems to demand such construction. Every lawyer will bear me out in this mode of getting at the intention of the legislative body. It is both usual and correct, so to construe Statutes.

The object of the legislature, seems to be, if I understand the language of the 35th section correctly, to punish robbers, who to accomplish their object, carry them with the intent to murder, not to punish any other, who makes an assault with intent to murder. Lawyers, doctors, clergymen, and such persons as are ordinarily engaged in some useful employment, and who occasionally make such assaults are not aimed at in this section. The object was to reach the robber who has murder in his heart.

It seems that the legislature were aware, at the time they passed this act, that robbers would occasionally, perhaps frequently murder, for the purpose of carrying into effect their chief intent—the intent to rob. That this was the object, is seen from the subsequent and previous sections of the Statutes. If the legislature attempted to punish robbers when they had the additional intent to murder, then it is quite clear that Mr. District Attorney was mistaken in relation to his construction of the Statute.

I will now, before I proceed to an investigation of the 35th section, consider the 34th. I will read it:

"If any person shall assault another, and shall feloniously rob, steal and take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed he shall wound or strike the person robbed, he shall be punished by imprisonment in the state prison, not more than ten years nor less than than three years."

What is the object and intention of the legislature as expressed in this section? It is to punish *robbers* who intend to commit the crime of robbery; and also to kill, or maim the person robbed, if such robber shall be resisted in his attempt to rob; and who not only have this double intent, but, in fact, succeed

in accomplishing, or carrying into effect *a part*, and *a part only*, of all that was intended.

If the act of killing intended had actually been consummated, then, by another provision of this chapter, the offender would have been guilty of murder, and, upon conviction thereof, the punishment of death must have been inflicted. This clearly shows, that *the intent* to kill or maim, if resisted, *must accompany* the matter of robbery, in order to bring a person within this 34th section.

To bring an offender under this 34th section, it must be alleged and shown that he had committed the crime of robbery, and that he also had the intention of maiming or committing murder at the same time, in case he should be resisted. It must be further alleged and shown, that the intent to kill or maim was not carried into effect. It must also appear that the robber was "*armed with a dangerous weapon*"—precisely as in the 35th section. The 34th section contemplates a striking by the robber of the person assaulted. The reading is, "or shall wound or strike the person so robbed." Then, I say, they intended to provide in this section for the punishment of an individual who had actually robbed another, with an intent to kill or maim, and who had *not* carried into effect the intent which existed in his mind, to kill or to maim. I wish, here, to observe, that if there was an intention "*to kill*," it was an intention to murder, because *previous intention* implies *deliberation*, *forethought*, *malice prepense*, in the language of the law. Then, I say, it is clear that the legislature intended to provide for the punishment of an individual whose business was that of robbing, and who actually succeeded in robbing, and at the same time had a farther intent—that was to kill the person robbed—although he did not succeed in commiting the murder. It would be necessary if there was an actual striking of the person robbed, to prove upon the trial of the accused, that the person thus struck was, in fact, the party robbed. The person must actually steal money or other thing, which would be the subject of larceny. It would be necessary also to establish that the accused had committed this larceny upon the person of another at a time when he was armed with a dangerous weapon, and, that he had *the* intention at the time of robbing, to kill or maim the person robbed, if by him resisted. All the accompanying circumstances would be evidence to go to the jury so as to enable them to ascertain whether the intent was to kill, or merely to maim. It would be necessary to establish the fact, that the robbery did take place; and next, that the robber was armed with a dangerous weapon, and that he intended to kill as well as to rob; and that then, upon conviction, the sentence would follow that he be imprisoned not less than three years, nor more than ten years.

The legislature couple the intent to rob with the intent to murder, which is very common. The jury might come to the conclusion, that the party did not intend to murder; but the legislature made this act broad enough to cover the crime if the robber only maimed, or if he struck upon any part of the body which might have resulted in maiming, the jury, from that act, might find an intent to maim. If he was to strike with a dirk upon any part of the body, where, from a wound, death would naturally ensue, that would be a circumstance from which the jury could rationally infer that he intended to murder, and not merely to maim.

The next section undertakes to provide for the same class of offenders when

a like intent exists and being armed in like manner; and when they accomplish *no part* of their design. Now the question is not merely whether the intention referred to in this 35th section was to kill if resisted, because it includes an intention to "*rob or to murder.*" If the robber was not resisted, the intention might exist to do the act of committing murder in *addition* to the intention to rob, and if so, he would be within this section, whether he calculated to do that act, whether he was resisted, or was not resisted. The previous section provides for the punishment of a robber who intends to rob and has an additional intent to kill the person thus robbed. And these two intentions might well exist at the same time and go hand in hand. The legislature understood it and provided for it. Will any one contend that under the 34th section a conviction could be had by proof of a robbery unless the intention to kill or maim went with it? It is not a provision which punishes for robbery in fact, unconnected with anything else, but punishes it when there is an intention to kill, or maim *if resisted.* The next section, as I have stated, is a plain, palpable provision to punish the same kind of offender *having the same intent* when he is armed with a dangerous weapon and has accomplished no part of that which he did intend. This construction gains strength from the fact that in a previous section the legislature have provided for the punishment of an individual who has made an assault with an intent to kill or murder. What would be the use of twice declaring the punishment for the same offence. The punishment for an assault with intent to murder, whether made when armed with a dangerous weapon or not, is fixed in the 32d section. What then is the effect of the 35th section? It has no earthly use, if the language is to be severed so as to include an assault with the intent to murder, unconnected with an intent to rob. That is already provided for. We must then construe these various sections so as to have them all mean something; so that none shall mean nothing at all. Section 32 provides as follows:

"If any person shall assault another, with intent to murder, or to maim or disfigure his person, in any of the ways mentioned in the next preceding section, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars nor less than one hundred dollars."

Now let us look at the sense of the idea that a legislative body would make a provision in relation to a particular offence, *however* performed, as is undoubtedly the case in this thirty-second section, as to assaults with intent to murder, and should, notwithstanding again make provision, as the same matter included in some previous section of the same act.—It is quite evident that an assault, with intent to murder, might, or might not be made with a dangerous weapon; and the legislature provided that this offence might be punished by a fine as low as 100 dollars, and yet forsooth, they would have been punished under a subsequent provision, for the same identical act, by imprisonment in the state prison, and although the least penalty that could be inflicted, would be imprisonment for the term of one year.

Is there any sense in that kind of construction? I am constrained to say, that in my humble opinion, there is very little. It is an attempt to convict a legislative body of being decidedly silly. Then I say, there is a punishment prescribed, for making an assault with intent to murder, whether armed with a dangerous weapon or not. As to an assault with intent to murder, this sec-

tion when dissected and understandingly read will be as follows: "If any person shall assault another, with intent to murder, he shall be punished by imprisonment in the state prison, not more than five years, no *less* than one year, *or by fine*, not exceeding one thousand dollars nor *less* than *one hundred dollars*." Suppose a person should be indicted under this section, for an assault with intent to murder, and it should appear on the trial, that the offender made the assault with a dangerous weapon, where with he was armed. Is it not true that he could on conviction, be punished under it by a mere fine of one hundred dollars,—would any superior Court undertake to reverse such judgment, if pronounced in the inferior Court?

A doubt might rise in the mind of the Judge however, under this section, from the peculiar phraseology of the enactment. He might very well suppose that the legislature only intended to provide for the punishment of an offender who should assault another with intent to murder by putting out an eye, as would be the case if he was charged with an assault with intent to maim by *putting "out the eye"* of the person assailed.—The language of the section would perhaps warrant such construction as here intimated. And yet it would hardly appear probable that a man should intend to murder by merely cutting of the ear, or slitting the nose of another, because it is not an ordinary way to carry murder into execution. Now you might cut off a man's ear, and not sever a great deal of it, and it would not be strong evidence of his intention to kill. Or he might slit or mutilate the nose or lip. That however, is not making an assault which would ordinarily produce death. Now is it to be presumed that under the 32d section the legislature intended that he should suffer this punishment in case he assaulted with intent to murder in any way, or if he assaulted with intent to maim by cutting out the tongue, or to disfigure by cutting off the ear, &c. Is that rational, I say, or is it more rational to suppose the legislature intended to punish an assault with intent to murder by putting out an eye, or by cutting off the ear—the latter of which could hardly be supposed sufficient to produce death, and that too, when he might make the assault without accomplishing any part of his object.—The punishment under this section, for an assault with intent to murder is much less; because to this intention there is no additional intent to rob. The intention was to punish those who should in any way assault with intent to murder, but whose occupation was not robbing, although actually having the means with them to carry into effect the intention existing.

The 35th section was intended for those who assault with intent to rob, and to accomplish which, also intend to murder, and for that purpose go armed with a dangerous weapon, whereby they may not only commit robbery, but also carry out the further intent—the intent to murder. For these various offences the legislature then go on and say—"If any person, shall by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be punished by imprisonment in the state prison, not more than three years, nor less than one year."

Now, this provides for the punishment of an individual, who robs without being armed with a dangerous weapon; and who does it with force and violence, and by putting in fear the person robbed, unconnected with any intent to kill. The next section provides:

"If any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or to steal, he shall be punished by imprisonment in the state prison, not more than two years nor less than six months."

It is quite immaterial how a man is robbed, or murdered, so be that either is done. This is obviously so as to murder. Very well, we will not dwell upon this matter. It is, I think, obvious that this indictment is not good under the 35th section, and perhaps not under either of the sections to which I have alluded. It is quite immaterial under which section—the 32nd or 45th—Judge Hubbell pronounced the sentence, because either will cover the case. He may have supposed that it was necessary for the indictment, clearly to state how the murder was attempted—whether by cutting out the tongue, or destroying the eye, or by some other means referred to, in the 32nd section; and so chose to base his judgment upon the 45th section, which would entirely sustain him. This section reads:

"If any person shall assault another with intentto commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein prescribed, he shall be punished by imprisonment in the state prison not more than three years nor less than six months, or by fine not exceeding one thousand dollars nor less than one hundred dollars."

But either this, or the 32d, is sufficient. Now, it seems, that Judge Hubbell did hold that although this was not a good indictment under the 35th section, yet he did suppose enough could be struck out as surplussage, so that the individual could be punished under the 45th section. That was his opinion, and he so decided. This matter was much talked about, and seriously discussed at bar; and, I ask now, and I submit to the lawyers who are members of this the Court—I ask, how many of them can take these various enactments, and having this indictment before them, and called upon to put a true construction upon the whole—how many of them, I ask, could say with the district attorney, that he has "*no doubt*?"

I say the legislature did provide in the last section, that unless it was clear that an offender was within some previous section, apparent upon the face of the indictment, thathe should be punished under the 45th section. This should be done—it is what the Court ought to do—it is what Judge Hubbell in this instance, had a legitimate right to do; and I say, so far from his being censurable for the part he acted in this case, he is entitled to the praise of his fellow men. There is obviously a defect in this indictment. If Mr. District Attorney intended to draw it under the 35th section, he should have said, "and the said James M. Haney, being then and there armed with a dangerous weapon, to wit, a pistol-gun, loaded with gun-powder, and one leaden bullet, did make an assault, upon one James Arland, then and there being, with intent, him the said James Arland, feloniously and of his 'malice aforethought to rob and to murder,' or 'to rob or to murder.'"

That is the kind of indictment the gentleman should have drawn, if we are not at liberty to separate the words, or to murder, from that of robbing. I maintain that it was necessary to allege that he made the assault with intent to rob and to murder.—Both intents must exist at the same time, in order to convict under this section. It is well settled in law, that the disjunction "or," must frequently be construed to read, or mean "and." "And" is the proper

word here to use, between the word "rob" and "to murder." It means the same thing; that is, "or," means the same as "and," in this particular section. There must be an intention to rob, with intent to murder;—but if it is severable, then James M. Haney did make the assault. That is the positive allegation; but it is not afterwards alleged that he made an assault, being armed with a dangerous weapon, with any intent whatever, and you must strike out a considerable portion of this indictment, to make it a good indictment, under any section.—When Mr. Collins said or contended that it was not good under the 35th section, Judge Hubbell called his attention to the 45th section, and asked whether it might not be a good indictment under that,—whether enough might not be struck out, or considered as surplussage, and yet leave enough to make it an indictment for an assault to commit a felony, and therefore subject Haney to punishment, under this 45th section. Yet Mr. Collins, as he testifies, contended that it was not good under any section of the statutes. I am more inclined to think it *was not*, than that it was. As to the 35th section, it is about as near a nondescript, as anything I ever saw; and I make that remark in all kindness, and with a due appreciation of the great legal attainments of the late District Attorney;—but we all know and understand that great precision is necessary to be observed in the drawing of indictments, and he as a pleader should have connected *the fact*, that being armed with a dangerous weapon, Haney made the assault with intent to murder; not be content with the idea, that it could be made good by argument, because an indictment that can only be made good by argument, is good for nothing.

If this indictment could only be made good by argument the Court should have arrested judgment—and so far from doing right in imposing the sentence he did, he ought not to have imposed any at all. It is in evidence before this Court that after this motion in arrest of judgment had been argued, it was submitted to Judge Hubbell, and that some time intervened before he pronounced the sentence. It does not appear from any witness that he gave an opinion as to what particular section he did finally conclude to punish him under, whether the 32d or the 45th. After taking it under advisement however, he may have concluded that it could be made a good indictment by striking out some words —that it could be made good under the 32d section—and the fine in that section is exactly the same as that provided in the last section of this chapter—the 45th. There is nothing in his conduct from begining to end, whether right or wrong, as to the final conclusion he arrived at to show that he had any bad motive in view. On the contrary all the evidence goes to show that he had the very purest of motives. He had a humane feeling for his fellow man, who was then in jeopardy—who had a large family dependent upon him. The judge was inportuned to inflict as light a punishment as was possible under the statute. No one approached him and endeavored to procure a sentance not warranted by law; but if it was possible, Mr. Smith himself desired a substitution of fine for imprisonment; but he did not think it could legally be done. —Well, he might have honestly entertained that opinion, it was well that he did. All lawyers should entertain honest opinions in relation to what law is, and entertaining should fearlessly promulgate them. He looked over the matter and still maintained his first view of the case. Now I think that the opinion of Mr. Collins is *nearly* as good as that of Mr. Smith. Messrs. Botkin & Knapp, also good lawyers, who were associated with Mr. Collins, concurred with him in

opinion; but I submit whether their united opinions were not worth as much as that of the district attorney. I am impelled to the conclusion that they were. The Judge had to apply this celebrated instrument to some one of the sections alluded to. It was a work of great difficulty.

I say it was a task that no man would willingly undertake, because it was an indictment bad in toto, or it was good under some section of the statute—but which was not easy to decipher. I am not aware that applying it to some section, was an impeachable offence. I am not aware that his motives are to be impugned, for having discharged this difficult task—and then passing sentence in accordance with the recommendation of the jury. I say, his open, upright conduct upon that occasion, shows most clearly that he arrived at his conclusions, from an examination of this indictment in connection with the statute. If he had intended to violate the law, I ask how it is, that he would go in the face and eyes of the world, and sentence the accused to punishment under the 32nd or 45th section, when he was of the opinion that the indictment was good under the 35th? Does any man suppose that Judge Hubbell would do an act of that kind. He was of the opinion at first that it was an indictment under the 35th section; but after hearing the matter ably discussed—like many other good judges, he changed his opinion. The prosecuting attorney might have taken exceptions and sued out a writ of error; but no, he thought his duty was rather to stop with an illegal sentence, than to take any steps to correct the error. Yes, although a sentence had been pronounced which he thought was without authority of law, he, nevertheless, rested content. It appears to me that his silence and total inaction upon the subject, shows that he had some pretty strong doubts; although he answered Senator Stewart, when he asked him, whether he had at the time of the trial, any doubt about that being a good indictment under the 35th section, that he had none whatever. He must, it seems to me, have had some misgivings, or else he would not have let the matter rest so quietly. If I were prosecuting attorney, I should not sit still, and not take a single measure to set aside a sentence that I thought illegal. I think if that is the duty of the district attorney, the sooner the world knows it the better. I have no such ideas of official duty myself. I will say that Judge Hubbell must have had great doubts—and no man who ever sat upon the bench, could by any possibility say that he was free from doubt in such a case. What judge would have been so indiscreet as to have imposed a sentence which he knew was in the teeth of a plain, positive statute? The facts show from beginning to end, that he was disposed to do what was right and proper; and yielding to the recommendations of mercy of that jury, he decided as he did; and I say, however erroneous that decision might have been, unless he acted from corrupt motives, he is not amenable to this, or any other Court. I maintain that that decision of Judge Hubbell, is correct, if it is possible to sustain that indictment at all. I am as well convinced that that decision was right, as of the fact that I am standing before this Court; and I believe that every lawyer who is not prejudiced, when he comes carefully to examine the statute, with reference to that indictment, will come to the same conclusion. I have thus endeavored to discuss the matter of the 3rd Article, and present it in a proper light, for the consideration of the Court. If I have failed to do that, most unquestionably the Court can set the matter right.

We come now to the 4th Article, specification one—the subject matter of

which article is well worthy of notice. It is that Judge Hubbell took part in deciding a certain cause, wherein the subject matter in part had been in litigation in some previous cause in which he had been of counsel for some of the parties. In regard to that I have to say, if a judge can be impeached because he decides a matter between parties where he may at some previous time have been counsel, then, I say, you may also impeach him for deciding upon any matter between the same parties where he has previously passed upon a question of law, and the *same question* of law is again presented. If you can prohibit a judge from passing upon one, you can also prohibit him from passing upon the other.

The first specification is, that he did give his vote and influence in favor of the said Charles I. Kane, (one of the defendants,) in a cause which had been decided by Judge Larrabee. He, the said Levi Hubbell, having been the solicitor or counsel of the said Charles I. Kane, in the subject matter of said cause, in a former cause against the said Kane and one George Cogswell. Well, he did give his vote, so did all the judges with the exception of Judge Larrabee. Is that indictable, or impeachable? The gentleman says the reason why it is impeachable in this particular case, is because Judge Hubbell had been of counsel for Charles I. Kane in the subject matter of the cause. Not because he had been counsel in the *same* cause, between the same parties; but in the subject matter of said cause—and because he had been of counsel for Charles I. Kane, although he had never been counel for either of the parties in the suit, where he so gave his vote. Yet, says the gentleman, he was inhibited sitting therein. It was a palpable violation of the law. It was of that character which, as the counsel will contend, amounted to corrupt conduct in office, for which the respondent must be impeachable and convicted. Well, I am constrained to acknowledge, that I cannot construe the statute as the counsel does; and, if his construction is right, all writers upon the subject of parties are unquestionably wrong. What is the meaning of the word parties when you speak of an action? Why, it means either the plaintiff or defendant; or, if there are more than one, then it means *plaintiffs* or *defendants*—all of the particular class. The language used in this statute is—"*for either of the parties*," not for any one of them." Now, the late Supreme Court of this State, in a case which came from the county of Lafayette—a case in which I represented one ofthe parties—did decide the distinct question, and held, that the word "party," in the statute, did mean persons of a particular class. It arose in this manner: The statute authorized a party to testify in his own favor—first giving notice to the opposite party to appear and testify. In that case there were four defendants; the plaintiffs gave notice to three of them to appear and testify. On the trial before Judge Whiton, the plaintiffs insisted upon testifying, inasmuch as the other defendant did not appear. The court decided that they could not be sworn until the other defendant was notified to appear and testify, and refused to comply with the notice. That the word "party," meant all of the particular class; and, on error, the Supreme Court held the same doctrine.

That decision then, fixes the meaning of the word parties—that is the law of this State. If there is no more than one plaintiff, or one defendant, it means no more. Well, in order that a person can be, or act as attorney, or counsel for either of the parties, plaintiff's ordefendant's, it is necessary that there should be *a cause*, for the reason that without a cause, you can never have *parties to*

a cause. Very well, does it follow, that because Judge Hubbell had been retained—and I argue now, upon the supposition that Charles I. Kane had retained Judge Hubbell in the case of Parsons and Lawrence, which was against this man Cogswell, Charles I. Kane, and some others—does it, I say, follow that the respondent is within this rule of law. I say, without hesitation, he is not. If that statute imposed a penalty of $500, you could not maintain an action on the evidence adduced, much less, can you impeach the man. Now, no sane lawyer would suppose that an action could be maintained for a penalty. Why? For this reason, if for no other, that all penal statutes are strictly construed in favor of the accused, and against the public; and proving that the Judge had been of counsel for Charles I. Kane, in the suit of Parsons and Lawrence against him, Cogswell and others, would not have sustained an allegation that the respondent had been of counsel for one of the parties in the case of. Calvin W. Howe and others, plaintiffs, and Charles I. Kane and George Cogswell, defendants.

The reason is, because the proof would be *variant* from the allegation—the suits named were between *different* and *not* the same parties. Then I say, if Judge Hubbell had been of counsel in relation to the same subject matter as is charged in that specification, yet nevertheless that statute is not broad enough to prohibit him as Judge from sitting. The parties, or any of them, would have a right to insist upon his trying the case. They would have a constitutional right to demand that he should sit and try the cause. How was he to send it off when he does not appear to have been counsel for "*either*" of the "*parties*" in the language of the statutes. Can they not insist that he shall try the cause? Most unquestionably they can. The Constitution gives *general jurisdiction* in all matters of the kind involved in either suit, that general jurisdiction would not of course give a Judge a right to try his own case. Our constitution was adopted with the understanding that no law would authorize any thing of the kind. When the constitution goes on and gives a judge jurisdiction in all matters [redacted] a general jurisdiction; I say it requires a specific enactment to proh[redacted]dge from sitting. I say this statute is not broad enough to cover this ground, even if the legislature can divest the power conferred by the constitution. There must then be a *cause*, the subject *matter* and the *parties* must be the same. If the *subject matter*, or the *parties*, are different, the statute does not apply.

Well, what is the testimony upon this specification? Why, the testimony upon that subject is, in the main, from the distinguished individual who had been lying (as he himself testifies) for *three* years in succession—George Cogswell, and he says first that he did employ Judge Hubbell for himself, and then he says that he thinks Kane employed Judge Hubbell also. He does not recollect that he alone employed Judge Hubbell to do that business, to protect his particular interest; but when you come to put him down to the point, to say whether he was ever present at any time when Mr. Kane retained the Judge or spoke to him for that purpose, he is under obligations to say that he has no recollection of any such transaction. How could he infer that Judge Hubbell might have been retained by Kane? Why, because the Judge signed Kane's answer, either as solicitor or as of counsel.

He had engaged him to protect his own interest, and at the time *that* suit was brought and going on, Kane was perfectly indifferent and cared nothing about

it. Then Cogswell himself dare not come upon this stand and distinctly swear that the respondent was of counsel for Kane at all. If he had dared, he unquestionably would have done it; but he did not. We put the distinct question to him, but he was bound to acknowledge that he knows of no such thing.

Well, what does Kane say? Kane says positively that he never did retain Judge Hubbell in that matter at all. Well, who is the most likely to know? Is Mr. Kane likely to know? He was made a defendant. He made an answer and if he had retained Judge Hubbell it occurs to me that he would be about as likely to know it as any man living. But he says unequivocally he never did employ him. He says that Cogswell brought his answer to him to swear to, and that it was drawn up by Judge Hubbell. Kane went before an officer and swore to it. Mr. Cogswell was the figurer in this case. He was the man of the occasion. He was the "*dealer* in the game."—He had the "pack all in his own hands," and he was dealing as he pleased; and when he thought proper to take an answer to Mr. Kane, he took it, presented it—Kane signed it, and then Judge Chandler signed it as solicitor. Judge Chandler, however, says he never was retained by Kane.

How is it that Judge Chandler was not retained? and yet he signs Kane's answer. He comes upon the stand, and swears that he never was retained, by Kane or for him, and that he was only looking after Cogswell's interests. That is the precise way Judge Hubbell was acting.

Judge Chandler signs the answer of Kane, although he swears he never was retained by Kane. Now I say nothing is more common among practitioners at the bar, than for one to sign a bill or an answer at the request of a brother attorney. Nothing is more commonly practiced than that. A man may go to a lawyer as a friend, and request him to draw a plea, answer, or declaration, and it may be that he never expects to do anything further about it. He writes as an amanuensis, that particular paper.—He writes what he is directed to write, and signs it as solicitor, counsel or attorney, and never receives anything for it, because he never advised what to do, to sustain or defeat the cause. All lawyers who do an extensive business, have frequent calls to do such favors; though lawyers who only get a case once in three or four years, may not have many opportunities to do it. Nothing is then, more natural, as I contend. Mr. Cogswell, as a matter of course, was moving in this matter, and out of form, it was necessary it should be done.

Now, I say, the subject matter in that case, was entirely different from what it was in the Howe case. That was a bill which was ordinarily understood to be a creditor's bill, filed in favor of Parsons & Lawrence, and founded upon some judgment, obtained against Cogswell, and it was filed against Cogswell, Kane, a man by the name of Church, and others, the Kanes—at all events there were *Kanes* enough in that case.—What was the other suit, that of Howe and others? Why, in that bill, they not only undertook—it was not only a bill in the nature of a creditor's bill—but they averred and undertook to show a partnership between Charles I. Kane and this man, George Cogswell; and *then* to show a fraudulent transfer of the property of the partnership, to Kane by Cogswell, and that it was in the hands of Kane, as a partner. They had first to establish the partnership, and next the transfer; and although they failed to show that there was any fraud in the transfer, when that partnership was established, then those creditors could urge, that as a partnership was established,

that they were entitled to a decree, that their judgments be paid out of that partnership property, although the transfer was made in good faith. I think the learned counsel opposed, is mistaken as to the decision made by the Supreme Court in that case. I have examined the celebrated case of Howe and others, against Kane and Cogswell, as reported in Chandler; and I think it will be found upon examination, that they did not decide that case, as he has intimated, but that the Court took the view which I have just presented. But it is unnecessary to spend any time in relation to that matter. Then I say, the bill was entirely different; the parties were different; and although there may have been an attempt to reach certain property in this Howe case, and in the case of Parsons and Lawrence, yet the parties are entirely different. Even if Judge Hubbell had been of counsel in the first suit, yet the statute contains no inhibition; but we contend that beyond all doubt, Judge Hubbell never was counsel for Kane. He testifies positively that he never was retained in the case, in any way whatever by him, nor by his direction, nor did he ever pay the Judge anything, or order any one to do so for him, nor did the respondent call upon him for any such pay. I call the attention of the Court to the statute that does in fact govern this case. It repealed by implication, as to the consent in writing, the one relied on here, which is found in the revised statutes, page 761, section 11:

"In case the Judge of the Circuit Court shall be interested in any cause or causes pending in said court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said Judge shall not have power to hear and determine such cause or causes, except by consent in writing of the parties thereto; and upon motion, the said Judge shall order a change of venue to an adjoining district, and the Judge of said district shall hear and determine said cause or causes."

The subsequent Statute governs, and is as follows: R. S. p. 440, section 20:

"In case the Judge of the Circuit Court shall be interested in any cause or causes pending in such Court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said Judge shall not have power to hear and determine such cause or causes, except by consent of the parties thereto; and upon motion, the said Judge shall order a change of venue to an adjoining circuit, and the Judge of said circuit shall hear and determine said cause or causes."

The other provision is in the appendix, and was passed previous to the time of the election of the first Judges, and provides also, for the transfer of causes from the late District Courts of the Territory, to the Circuit Courts of the State. Now we say that this last section, so far as consent in writing is concerned, absolutely repeals the other.—A *consent is obtained* under the 20th section, but it *is not* to be in writing, and being different it repeals the other, because if the parties do consent, it is quite immaterial whether the parties do it in writing, or do it verbally. The latter is good *without* writing, therefore the latter necessarily repeals the former, although there are no express repealing words in the act. Then it appears first that Judge Hubbell never was retained by Kane; secondly it appears that so long as Cogswell was a party in that case, Judge Hubbell never sat in it, and it appears also, that he sent it to Washington county, for the reason that he had been of counsel for Cogswell in another suit, entirely out of delicacy of position. And it was presented to Judge Larrabee for deci-

sion.—On various occasions it was in the Supreme Court on appeal, and Judge Hubbell invariably refused to sit upon that cause, so long as Cogswell was a party; but when that case had passed to a final decree, against him, so that his rights were fully disposed of on that bill—then it was, Kane being still retained as defendant, that the respondent did sit in the Supreme Court, and advised with the other Judges, and gave his vote in relation to the questions involved, and never till then. He invariably declined to sit, while Cogswell was a party, but when Kane was alone—and the only defendant in the matter, then he did sit, and did vote upon the question presented to the consideration of the Court. He has contended that he never was counsel for Mr. Kane and he has established it, beyond all earthly question. Then again, this Statute does not apply; and that disposes of this matter entirely.

Philander Kane, who answered with Charles I. Kane, testifies in connection with this matter, that he never paid Judge Hubbell anything, and that Judge Hubbell never asked him for anything. It is very singular, indeed, that Judge Hubbell should suppose that he was to render the service he did render, without compensation. When Cogswell retained him, if he supposed he was to be rewarded for his service by the Kanes, in whole or in part—it is very singular, I say, that he was never paid by either of them, and that he never called for pay. I say, Cogswell himself dare not come upon the stand, and swear before this Court that he knows that Kane ever did retain the respondent, or pay him anything. It is to be inferred from the fact of signing his bill, either as solicitor or counsel. Again, I say, the parties were entirely different—the subject matter was different, and Judge Hubbell, in addition, had never been of counsel for Kane; and so far as the rights of Cogswell were concerned, they had been disposed of by the final decree made by Judge Larrabee. Why did Judge Hubbell decline as long as Cogswell was a party? He sent it away, and when the case came to the Supreme Court, he still declined, out of pure delicacy; but when Cogswell was no longer in the case he did sit; and that shows that his intentions were pure, and that he only desired to do his duty. Judge Whiton testifies in regard to this case as well as the Hungerford case, that he said and did nothing that was at all improper, that he used *no means* at all improper to influence the other judges. Then I say, first, that Judge Hubbell had a legal right to sit; and, sec ndly, his intentions were pure, and he supposed he was doing his duty.

The next specification is the case of Hungerford against Cushing. That is "*really* a serious thing," a very serious thing in the way they have charged it; and the proof shows that *it is about* as serious as the charge—just nothing at all. Now, Judge Hubbell admits that he was retained by Mr. Hungerford to assist in the argument of the motion to quash the indictment against him, in the District Court of the United States. That the agreement was, that he was to give an opinion upon the sufficiency of the indictment as to the points raised by the motion, for fifty dollars, or that he would assist in the argument on the motion, in case it was to be again argued, for $100. That, at the time of the retainer, it was anticipated that the motion would be again argued in Milwaukee—having been previously argued by Mr. Ryan and myself in this place—further admits that Hungerford paid him as agreed; but that nothing was done, for the reason that the cause was dismissed, either by the order of Judge Miller, or by the act of the prosecuting attorney. The parties in the suit were the

United States on the one side, and Hungerford on the other, and was pending in the United States Court. Nothing was, however, done in the court, after this retainer, by Judge Hubbell, or by any of Hungerford's counsel, because it was dismissed. Judge Hubbell did confer with Hungerford and with Mr. Ryan, upon the subject matter of that motion to quash. That is all he did. He undertook to inform himself upon the subject in order to be properly prepared to discuss the matter in Judge Miller's court.

In the first place, it becomes necessary to consider what was the real point in the case of Hungerford against Cushing, to be decided by the Court—that is, so far as the questions of law were concerned—the allegations in the bill, and denied by the answer of Cushing—and what the legal positions were, that did or would arise in the chancery case, and upon the indictment against Hungerford. These are the questions that are presented for discussion in this Court, upon this Specification; and I will boldly and confidently assert, that Judge Hubbell, by his retainer, was not within the statute inhibition; because the indictable matter was not anything, upon which Judge Hubbell had ever acted as counsel for either of the parties as judge, nor was he interested in any other manner. Then I say, that the parties were entirely different—the subject matter was wholly different—the cause was not in a State Court, but a different Court. So far as the question was presented for the consideration of Judge Miller in that Court; I say, there was no possibility of its ever arising before Judge Hubbell. It had to be disposed of in that Court; and if the parties were dissatisfied, the only resort then, was to go to the Supreme Court of the United States. If the motion to quash had been over-ruled, for myself, I had determined to interpose a general demurrer, and let the district court decide it against us, if the Judge saw fit; and then remove it to the Supreme Court of the United States. But we did succeed in satisfying the Court, or the district attorney, that the indictment was good for nothing, and a *nol. pros.* was accordingly entered. That was the end of the case. Mr. Hungerford was indicted for perjury, in making an affidavit for the purpose of entering lands under a pre-emption right. These lands, or some of them at least, had been previously conveyed to Caleb Cushing, in trust for the use and benefit of Hungerford. Cushing took from Hungerford, one Purinton and Green, a deed in trust, and if the grantors had any interest, they passed that interest *severally* to Mr. Cushing, in trust for their several use and benefit. Now, that is all there *was* in that deed. (Mr. Knowlton here read extracts from the records in the case of H. *vs.* C.)

Upon that affidavit perjury was attempted to be assigned. The Court has already been advised of the motion to quash; and the only real points insisted upon as being the great points in the case, were two. By the allegation contained in the indictment it appears that Wm. S. Hungerford, on some day in the month of July or August 1849, appeared before one F. P. Catlin, the register of the Chippewa land district, and within the jurisdiction of the district court—and that he, the said Hungerford, made oath to the said affidavit, (setting forth the substance thereof) before the said Catlin, who, it was alleged administered the oath. This affidavit, as set forth in the indictment, was drawn under a law of Congress that expired by its own limitation some time in the month of June, 1842—if I recollect correctly, on the 22d day—more than seven years before the affidavit was made. Upon this state of the case two

points of law were raised on the motion to quash the indictment—and the only points that were discussed by myself. Mr. Ryan, however, who was associated with me at that time in opening the argument, elaborately considered other points—that is the sufficiency of the assignments of perjury.

These two points were, first, that F. P. Catlin, as register of the "Chippewa land district" had *no authority* to administer that oath in *this State*—the whole of that district lying and being in the Territory of Minesota—and had so been, by law of Congress, for more than one month prior to the time when the oath was administered.—Second, that there was no law of the United States requiring such or any oath or affidavit to be taken or made in order to enter or purchase this land, as it was purchased by Hungerford, as appeared on the face of the indictment—the law of Congress under which the affidavit was obviously drawn, having expired by its own limitation, many years before—and which had never been revived, nor had any similar law been passed.

It was after that argument, that Judge Hubbell was retained to assist in the argument of the motion at Milwaukee, in case it had to come to a re-argument; but the Court will see that there was no point to be disposed of except the two I have named. Either of these positions which I maintained, would dispose of the case, whether the others were well or ill taken. These latter, went solely to the sufficiency of the assignments in law—admitting they had a basis in law. These latter positions, although assumed, are not material to be discussed here. There was nothing in relation to any action of the Register or Receiver that was mooted, or that could be, save that already mentioned.

In Hungerford's bill against Cushing, it was alleged that he claimed the land by virtue of improvements made, and *sole* exclusive possession by him at the time of the execution and delivery of the trust deed to Cushing, and for months prior thereto. By the terms of the trust deed, and as alleged in the bill, a company was to have been formed upon the trust *property as a basis*, the capital stock of which company was to be one hundred thousand dollars, to consist of one thousand dollars each. This company was to have been called the "St. Croix Falls Company," or by such other name as should be designated in an act of incorporation, if one had been obtained.

The trust property was "*rated*" at the nominal value of thirty-four thousand dollars; and in case the company had been formed, the same was to be conveyed by Cushing to the company; and, then, certificates of stock of thirty-five shares of the hundred were to be issued to the grantors, in such proportion as they should agree upon; or, if they did not agree, (as Green and Purinton claimed an interest in the property,) in such proportion as should be decided by arbitrators, pursuant to articles of submission theretofore executed by and between them. The remaining sixty-five shares were to be paid in money to Cushing on stock subscription, and the company fully organized within six months from the 1st day of October, 1846.

The final organization was to have been consummated at the Falls of St. Croix, on the first Monday of May 1847; or if done earlier, or at another place, Cushing was to give notice thereof by mail to all the shareholders. None of this was done. No company was formed or organized, as stipulated in the trust deed, as appears by Cushing's answer. The trust was not, therefore, executed as contemplated, and Cushing ought to have restored the property pursuant to his covenants, in the instrument creating the trust, and under which he

took the property, he, being reimbursed, his legitimate and proper outlays in attempting faithfully to execute the trust reposed. Upon being paid these expenses, he became bound to re-convey. But Mr. Cushing had violated his covenants and failed to perform his duty in all its parts. He had never done anything whatever to acomplish the objects contemplated by the parties conveying to him in trust, and after making that allegation against him in the bill, Hungerford asked a decree of the Court cancelling that instrument, and also to have decreed to him the personal property, as well as what was just and proper for the use of the premises, and such was the decree of the Court before. At the time of filing the bill, Green, Purinton and Rantoul, with others, were made parties defendants, but before the cause went to a final hearing, the bill was dismissed as against all the defendants except Cushing, and the bill was retained as to him, and thereafter, at the final hearing a decree was passed as prayed, which was reversed, not because that decree was wrong or improper, or not warranted by the evidence; but upon the principle that Purinton and Green had an *apparent* interest, from the fact that they owed Hungerford, in making the trust deed, and that they had a right to be heard in that case, and show, as *possibly* they might, although Cushing could not, that the trust had been executed, and that they in fact, by the award of arbitrators or otherwise, were *cestui que trusts* of the property. It was therefore by the Supreme Court held that Green and Purinton, or their assignees, or grantees, ought to have been retained until the rendition of the final decree.

Judge Whiton testifies that that was the point upon which the decree was reversed, and this was the great question involved on the appeal to the Supreme Court. The question was also discussed whether Mr. Cushing had attempted to perform the trust by him accepted and undertaken in this deed. Did he take it and undertake to execute as stipulated? If he did do that the next inquiry was, whether he did in fact execute the trust by having the company formed as provided by the contracting parties. Another question presented on this bill was whether Cushing had used the property, and if so, then what ought he to pay for that to Hungerford? If he had failed to form this company, then I say that the trust instrument should no longer be allowed to exist. Hungerford asked to have it cancelled and the circuit Court upon hearing did cancel that instrument. No reconveyance was ordered. That left nothing for Mr. Cushing to do, except to pay for the use of the property. He had failed in all respects. I say that that bill and Mr. Cushing's answer (so far as it was responsive to the bill,) do not present any matter arising upon that indictment. If the gentleman had relied upon that part of the second answer of Cushing, wherein he sets up that Hungerford entered this land in his own name and alleged fraud as to himself and those claiming under him, it was of no avail. Hungerford claimed nothing *based upon* that government title—that matter as set up, was not responsive to any charge in the bill, that matter in the answer then, was not evidence, that it never was established as a fact by proof, is apparent from the testimony taken in that case, and now before this Court.

It was quite immaterial; because that matter was not in issue, and if the replication had specially put it in issue, it would not have affected the question, whether the *trust* had, or had not been executed. You will find no proof, however, that was, as a substantial fact, calculated to establish the matter thus set up; and not being responsive to any allegation in the bill, it was not evidence

in favor of Mr. Cushing. The fact *not being* established, the legal question did not, and could not arise before Judge Hubbell, whether Hungerford had been guilty of fraud or not. Hungerford's right to a decree rested entirely (before Judge Hubbell,) upon the right or title, by virtue of sole possession by him, Hungerford, at, and prior to, the time he conveyed and delivered to Cushing *that possession*, which he had agreed to deliver, under the trust arrangement, and upon that title, and the question of violation of trust alone, the whole case turned; and ever must turn between the trust-grantor and Cushing.—Hungerford was not, and could not be entitled to any relief by virtue of his pre-emption right, and of the patent of the United States, to him issued thereon. I say, moreover, that this point or question was not before the Court at all. The bill was filed long before the purchase was made or patent issued. And I challenge the ingenuity of the learned counsel to show that the title by patent could, if existing, make any difference on that bill. Now the question on the indictment (admitting the affidavit legal) was, whether Hungerford had made a deed, with covenant of seizure, or warranty of title, or whether he had made a contract with any person whereby he had agreed, that the title which he might acquire from the United States, *should enure* to the benefit of that other—and next, whether he had entered upon that land at the time specified, in his own right, and exclusively for his own benefit.

Those were the questions; provided, of course, that such an affidavit was required by law, and had been sworn to as by law provided. Well, it will be found upon examination of this trust instrument, that Mr. Hungerford does not make any agreement or covenant that he will convey any title that he might subsequently acquire from the United States to any human being. I say, his covenants were entirely of a different character. He nowhere contracts to convey a title to any person or persons. He makes no such covenant. Hungerford made no separate covenant in relation to the matter independent of its being a joint covenant. I say, Mr. Hungerford, and Green and Purinton, covenanted together—covenanted jointly. What did they covenant in relation to the matter of title subsequently acquired? They simply covenanted to aid Cushing, as trustee in getting the title for the benefit of a company which was in contemplation—the title in the shape of stock, to enure to the benefit of the owner of the title conveyed to Cushing. Hungerford was declared *cestui que trust*, and so were Purinton and Green, if they conveyed any title to Cushing, by that instrument, and Cushing was made their trustee; and so far as the property was concerned, without title by patent; and in case the company had been formed, *it* was to be taken as so many full paid shares; *and* this property, as we have seen, was to be *rated* at the nominal value, $35,000 in the $100,000. Now, then, I ask, whether a covenant by an individual to use his best endeavors, thereby aiding another to accomplish a particular object, is a contract, that he himself will convey the property that he may subsequently acquire; but, I believe, the covenants are in direct opposition to each other, and that there is no analogy between them. The covenant as to title was only to defend against all titles save the one then in the United States. Then, so far from this trust instrument showing that he had entered into such an agreement, most unquestionably shows directly the reverse.

Mr. President, I propose now to read from the laws of Congress, establishing the new land district within this State, which act took effect previous to the

existence of this affidavit made by Mr. Hungerford. The act was approved March 2, 1849, and reads:

"That from and after the thirtieth of June next, the Land Office for the sale of the public lands, in the Chippewa land district, shall be removed from the Falls of St. Croix, to Stillwater, in the proposed Territory of Minnesota," &c. And further, "That for the sale of public lands in the *State* of Wisconsin, an additional Land Office and Land District are hereby created, comprising all the lands not included within the districts of land subject to sale at Green Bay, Milwaukee, or Mineral Point, which shall be called the Western Land District." So we discover the district within which this land lies, was the "*Western Land District*," *and not* the Chippewa Land District. This act shows that Chippewa Land District was established in Minnesota, on the 30th of June, 1849; and it is alleged that F. P. Catlin, the Register thereof, administered an oath in this State, after that day. That act at the time Catlin did it, was unauthorized in law. I have not been able to get the act of Congress, which did once require the making such affidavit, as was made by Hungerford. Some person has taken it from the library, but I will endeavor to get it for the use of the Court, before this trial closes. This state of facts, however, will appear—that the act of 1838 was contined in force for two years, from the 22nd of June, 1840. The act of 1838 was, with other provisions, an act continuing the act of 1838. Then the act continued, expired by its own limitation, on the 22d of June, 1842; and this affidavit was made in July or August, 1849; and under an act which went out of existence seven years and something over, previous to that time. On the motion it was contended, that as the law under which the affidavit was made, had ceased to exist by its own limitation, that that indictment was bad; for the reason that no law required the affidavit to be made.

That law has never been revived, and no similar law has ever been passed by Congress—and the district attorney upon examination became satisfied that there was no such law, and further, that he had made an improper allegation as to the register of the land district. He therefore entered a *nol pros.* Now then I ask whether the assignments of perjury, or either of these questions under the law of Congress as to the affidavit, or "Chippewa land district," or "western land district"—whether these questions, or either of them could by any possibility arise in the case of Hungerford against Cushing? It is absolutely impossible. He who should assist it, would be upon that particular subject perfectly insane.

I ask this Court whether any of these questions could legitimately arise in the case between Hungerford and Cushing?—How is it that the same conclusions were, by any possibility, to arise upon that issue between the parties litigant, and upon this indictment alleging perjury. Could there be any analogy whatever, an adjudication declaring that the motion to quash was, or was not well taken, could have nothing to do with the questions that would arise between the parties in the civil action? Now is it possible that such could be the case? I say most unhesitatingly it is absolutely impossible, whether the assignments of perjury in that indictment, were well or badly pleaded, was a question of law which of course arose upon objections being taken, and the determination of the law must dispose of it. I say it is impossible that any Court, by any torturing of language, by any twisting of law, (were it possible for a Court to

twist it,) could properly say there was the least analogy between the cases.—In one of the cases Judge Hubbell was employed to assist in the argument upon that matter of a motion to quash. although he never did discuss it before the Court; he gave his opinion to Hungerford and whether he did to Mr. Ryan. is not before this Court; whether he did or not, is quite immaterial. He prepared himself to argue the motion in case it was to be again argued in the District Court. This decree had been entered by Judge Hubbell, before his retainer, and it does not appear that he had anything to do with the case *prior to* the decree.

Mr. Ryan. It does appear, Mr. Knowlton.

Mr. Knowlton. I say he was retained afterwards. The decree was made on the 25th of July, 1851; and it does not appear from what the respondent admits, in no form that he was retained before decree. Upon this point we are without any testimony. They have introduced no testimony upon this subject, and the presumption of law is with us, Judge Hubbell was not disposed to keep anything that he recollected, from the knowlege of this Court, as to what he had done in the premises. He wishes all his conduct passed upon; and he seeks it, not upon this case only, but upon all the charges and specifications. He asks the cold neutrality of exact justice from this Court. That he does ask, and that he confidently expects to obtain.

There is upon the face of the specification itself, an absolute absurdity. How can charges in an indictment—a charge of perjury which involves the question of the guilt or innocence of an individual be the same in whole or in part as the question whether a company had been formed—whether a trust had been violated—whether the trust instrument should be cancelled—whether the trustee should yield up the trust property and pay for its use, or the profits by him received thereupon; a question upon this bill of Hungerford, was whether a trust had been created. That was admitted by Cushing? Secondly, he admitted that he did accept or undertake the trust.

He covenanted in that trust instrument, that he would take and hold the property for the purpose therein specified, and for no other purpose whatever.

Another question was, whether Cushing had performed the trust as agreed and by him undertaken—which was to have a company formed—to have $65,000, cash paid into his hands, within six months from the date of the deed—the company then to meet for final organization at the Falls of St. Croix, unless sooner organized at some other place, after notice from him, to all the share holders. Cushing in his answer insists that a company was formed, but says that he never received any money from any person whomsoever under the trust deed. He also says that there were divers meetings of this company held in the city of Boston at which, at which various members of the company attended. He also admits that no meeting was ever held at the Falls of St. Croix—and further that no notice of the organization meeting was ever sent to Hungerford. Then he undertakes to show what kind of company he did form—which was anything but a company as provided in the trust deed. I wish you could see that celebrated genius and his company.

I wish you could see how Rantoul could pay out more money than he received. Their company beat anything in the shape of wild cat banks in Michigan; it cast them all in the shade.

Mr. Rantoul, in the account rendered accompanying his answer, shows

$65,000 paid in, and $138,000 paid out of that $65,000; and Cushing, referring to Rantoul's answer, endorses the fact. That, I say, was the kind of company formed according to Cushing's own showing. His answer has been read before this Court, and by that these facts appear.

Now, I would like to know, if this Court can divine how Mr. Rantoul, or Cushing, could spend $138,000 when they had only $65,000. This statement is just as reasonable as that a company was formed pursuant to the terms of the trust instrument, and one is just as reasonable as the other, and not more so. Cushing, as will be seen by his answer, formed a company, the shares of which were $100 each, without any limit of capital stock. By the trust deed there was to be one hundred shares, to consist of $1000 each. Under this, the trust property represented $35,000—that is thirty-five shares of the hundred, which was the maximum. In lieu of a share of $1000, he makes it $100; forty of his $100 shares would be more shares than the trust property could represent; so that $4000 of the money of Cushing and his associates would out vote, and, of course, control the $35,000, consisting of the trust property, which belonged to Hungerford alone, or else it belonged to him, Purinton and Green. This way of forming a company would be a beautiful way to trick Hungerford, Purinton and Green. If he could get a majority of his non-descripts, the rights of those represented by the property conveyed to him would be completely destroyed. Such is the beautiful and accomplished Caleb Cushing, who is now a member of President Pierce's cabinet. I say, no man, and I say it fearlessly, ever exhibited a more determined disposition to defraud another of his just rights, than this same Cushing has exhibited in his defence against Hungerford. He intended from the outset to defraud Hungerford of his rights. He has spread it before the world in an answer that shows it beyond controversy.

This man who has been minister to China—a general in Mexico—a millionaire in Boston, and now Attorney General of the United States—He is the very man who has done all this. *He is* a splendid genius, *and* these are his magnificent operations. I wish to make one assertion in this connection upon my account; and that is, that in my opinion this court would never have been troubled with this impeachment had it not been for the money of Caleb Cushing. Now I do not wish to cast blame on the counsel opposed, because I do not know that he knows anything of it. I do not mean to say that the managing committee, or any member of the assembly knows anything of it, but I assert the fact and can establish it by proof if required. Judge Hubbell was not of that pliant material that $4000 or $5000 could intimidate or buy.

Cushing could not get a decree, and because he could not buy or frighten Judge Hubbell to do an unjust act, it became necessary to prosecute him by impeachment. These things I say are what I believe to be true, and I think I am warranted in this assertion from the evidence contained in the answer which has been read. This, in connection with some things which I have learned, *have been done* by Cushing's myrmidons claiming to be his agents, satisfies me as to the whole matter. Cushing is the man that would spend $50,000, if necessary, to ruin Judge Hubbell. These are the reasons why that celebrated Cushing case has travelled from Judge Jackson to Judge Whiton, and from him to the Circuit Court of this county, where it remained so long—then crept into the Supreme Court—then found its way into the District Court of the United States, and now it has got into the Court of impeachments.

Unquestionably Mr. Cushing intends to take it through all the Courts he can. As this counsel has asserted he "*can come to this Court of impeachment and get redress.*" That is the doctrine of Mr. Cushing and unquestionably he thinks so.

Then, as this property was a very large property, and as Mr. Cushing was desirous of acquiring this property, it is very reasonable that he should be so ferocious, and that he should be disposed to put himself to some little exertion, and to spend a little money for the purpose of impeaching a Judge to get him out of office, when, as he anticipated, he could get some more pliant tool to serve his purpose. Very well, Mr. Cushing may suppose that he has been injured. He may be very honest in that idea, and he may be pursuing Judge Hubbell from disinterested motives; but I have come to the conclusion, that his motives are of quite a different character, I think I have discovered an attribute of meanness in his character, and that not of a doubtful kind. It has been wisely said by a great observer of human nature, that "meanness is generated in the sweepings and dung of the lowest vices, and crawls into existence with the filth upon its back." I think I have discovered that "filth" in the conduct of that gentleman. It is exhibited upon his answer, and as exhibited by the proof in this Hungerford case. I make the assertion from the facts developed in that case; I wish that gentleman was present, so that he could hear what I now say; and I should glory in having him hear it; and I hope he will read what I have said for his own edification.

Adjourned till to-morrow morning.

TWENTY-SIXTH DAY.

WEDNESDAY, July 6.

MORNING SESSION.

Mr. ARNOLD. On my return here yesterday, I found that an arrangement had been made by which the managers had raised an opening of the case, claiming only the right to close. Our understanding has been, that only one counsel has been expected to speak in the closing argument. It has been suggested to me, that a different understanding is had of the arrangement by the other side, and that more than one counsel expect to address the Court. I wish to ascertain the facts, so that our order of proceeding may now be settled.

Mr. SANDERS. For the information of the gentleman, I will repeat to him what the arrangement was between his associates and the Managers, and the arrangement as I reported it to this Court. The proposition was made by Mr. Knowlton, to submit the case without argument; but we concluded not to take that course. We met in consultation with Mr. Knowlton, and then it was arranged that, for the purpose of saving time, the managers would waive an opening of the case. The respondent, by himself and his counsel, were to submit their argument or arguments; and then it was to be closed on the part of the Assembly with their argument or arguments. In relation to the number of arguments, it was understood between us, on the part of the prosecution, that in all probability but two would speak; and I do not know but that it was limited to that number, although, at that time, the Managers did not know cer-

tainly whether there would be more than one or two arguments on the part of the Assembly.

Mr. ARNOLD. I would inquire whether more than one now intend to submit an argument on the part of the prosecution.

Mr. SANDERS. Yes, sir, two.

Mr. ARNOLD. Then, I say, I had not heard a word of any such arrangement till I heard it from the Hon. Managers lips. It was reported to me, that for the purpose of saving time they had waived an opening; and that then, after our arguments, they would close the case with one argument. I am surprised that any such arrangement was entered into. I did not myself approve of the arrangement even as I understood it. In a case like this, embracing so many charges and specifications, with such a mass of testimony, and such proof, it was of the highest importance to the respondent to know what charges were reliedupon, and in general, the grounds to be taken in the case, a course which it is usual to take in all prosecutions of this important character, I do not see now how this can be denominated an arrangement to save time. It is an arrangement to submit this whole mass of testimony to the Court without light, without any knowledge of what is to be insisted upon, and then make up our argument as best we can. It would have saved time if the prosecution could have been heard in their opening. I understand now, that they are to be heard in argument by two speakers, and we are to be heard by two. I say, now, if such an arrangement be not absolutely binding, I shall appeal to this Court to direct, that after Mr. Knowlton shall have conducted his argument, the Managers, or their learned counsel, shall proceed with one of their arguments, so that we may have an opportunity of knowing what points they make in the case.

Mr. RYAN. Mr. President, I was not in Court, when that arrangement was made.—It was reported to me immediately afterwards by the Managers substantially as it has just been stated. I think the gentleman is mistaken in saying it would save time, to have an opening argument on the part of the Managers. We propose to make our arguments upon different grounds, that is to say, we propose to divide the argument between us. I understood the arrangment at the time, as it was made, and it would be very unfair to apparently assent to that arrangement, from Saturday till now, and when the counsel was speaking for the defendant, who is considerably well advanced in his argument, to suddenly notify the Managers that we must proceed upon his finishing. It is asking us to commence without notice—withholding that notice from Saturday till now.

Senator DUNN. I think there is no proposition before this Court now. We are exhausting the time of the Court, to little purpose, and I hope the counsel will proceed with his argument.

Mr. ARNOLD. I beg to say, by way of apology, that I brought this matter to the attention of the Court now, in order to notify the other side, that I should expect that one of them would speak before I am required to proceed with my argument. You will find that in all the precedents, this has been done. In the case of Peck, the counsel for the defendant made an argument after all the Managers had spoken, with one exception. The case was closed by Mr. Buchanan, I believe.

Mr. KNOWLTON. Mr. President, before proceeding to the argument of this case, I will state, in relation to any understanding which I had with the Man-

agers, that I never made any arrangement with them, that they were to have two speeches at the close. At the proper time I will explain that, and state what I understood the arrangement to be.

Argument of Mr. Knowlton continued.

Mr. President, last evening I was discussing the 2nd Specification of the 4th Article. I had just about concluded; and to sum up my remarks on that specification, I was passing an encomium upon Caleb Cushing. I made the assertions in regard to him upon my own account, and I reiterate that statement now; but I do it on my own responsibility, as I know not the views of the respondent. I state it upon what I have discovered in the case, as I observed last evening, and also upon some facts which I have learned outside of that case.

I will proceed now to dispose of this Specification, so far as I did not dispose of it yesterday. It will be perceived that in the case of Hungerford against Cushing. Hungerford sets up the trust deed and gives a copy it. He also insists that he did execute that instrument and acknowledge it; but he insists too, that Caleb Cushing had not complied with that instrument in any of its parts; he therefore asks a cancellation of it. The prosecution in this case unquestionably will contend—I cannot, however, anticipate certainly any of the grounds upon which they are to base any of their arguments—but they will contend that, as in that case Hungerford shows that he executed a deed conveying all the title he then had; and, because there were covenants contained in that instrument, which had been delivered, his title ceased, and that the covenants themselves operated as an estoppel, which would bar him from setting up his former possessory title, and, therefore, that there could arise the same questions of law. A careful examination of that case will show that it is not possible; because the legal result would be the same. Whatever may be the covenants of Hungerford in this deed of trust, they can have nothing to do with a violation of the implied trust obligations by Cushing; although he had reconveyed the property. If he had violated them, he would have been liable in a court of equity; and also liable in a court of law, for a breach of his express covenant; and it will be recollected that the covenants would take effect from the time there was a breach. If any title has passed, it passed by that deed. If Hungerford was liable because of the patent, an action would lie, whether he swore falsely to get the government title or not. The trust itself, took effect from the delivery of the deed. This was not a contract or agreement, whereby the title he might acquire subsequently, should, in consequence of the covenants, inure to the use or benefit of any other person. At the time of making the affidavit, he had not *then* entered into any contract by which the fee title should enure to anybody else. The possessory title which he did pass by the trust deed, and for a purpose therein stated. That was for the purpose of forming a certain company and for one other purpose – for his use and benefit to the extent of the title he then had—and if we examine the allegations in the bill, and take the trouble to recur to the proofs in that case, we shall see that he had, on the first day of October 1846, and for months previous, the sole, exclusive possession. Neither Purinton nor Green had possession of that property. Then, Hungerford *being in posession*, had all the title that could rest in an individual— the fee being in the United States. Then the title by posses-

sion was all the title that was passed; and none whatever could be obtained from Green or Purinton. For the best of all reasons, that having none, they could transfer none. No title could pass from Green by his covenant, to warrant against all titles, save that of the United States. He may be liable upon this covenant, or upon the covenant, that the premises were free from incumbrance.

Any thing of that kind may become liable upon, but so far as title is concerned he could pass none. Neither Hungerford, Purinton or Green could pass the fee title. The *only* title Hungerford could pass, was the title of possession. Another thing in that trust was this: In case this company was formed as contemplated, and expressed in the trust instrument, then Mr. Cushing, the trustee, was to convey that property to the company, and certificates of stock were to be issued to Hungerford to the amount of $35,000, if he owned the whole. And if Purinton and Green owned it, in equal parts to the extent of that fractional part, each were to have like certificates; and if the three owned it the matter was to be settled by arbitration, and in proportion, certificates of stock were to be issued to the amount of $35,000. There was an obligation resting upon Cushing to convey it to future occupants. It was no part of Hungerford's obligation to convey the fee if he subsequently acquired it, *nor that which* he had conveyed to Cushing. *This* conveyance by the terms of the instrument was to be made by Cushing. He was to convey the title he took by *the deed* as well as that which he might acquire from the government—that is, he was to so convey in case the contemplated company should be formed as provided in the trust deed, and not otherwise. Th se were the conditions that required even *him* to convey the title he had or might acquire. Hungerford, Green and Purinton were to use their best exertions to acquire that title for the future contemplated company. That was consistent with the affidavit made by Hungerford.

He sets up the fact that he did make the covenant, but because Cushing had failed to comply with the terms of the trust, he asked to have the deed cancelled; and he asked also a decree to recover the value of the use of that property, and as Hungerford delivered some $4,000 worth of personal property, to Mr. Cushing—he asks that that property may be re-delivered to him, or that Cushing be held amenable to him for its value. So far as the realty was concerned this personal property had nothing to do.—Where then is the contract that Hungerford had entered into whereby the title he might thereafter acquire should inure to the benefit of any other person? It is perfectly preposterous. I wish to state further, that there were no *cestui qui trusts* appointed in that instrument except upon the happening of that contingency—the formation of a company then in contemplation—and all that has been talked—and much as has been printed—one pamphlet upon another that we had not brought before the Court, all the *cestui qui trusts*, who should have been made parties was time misspent. I say it is the sheerest humbug that ever entered into the head of a lawyer.

No lawyer who had the least pretensions to ability, would deny the necessity of bringing before the Court all the *cestui qui trusts*, when the trust property was in question. But that was not the condition in this case of Hungerford's. The trust instrument, provided as before said, that upon the formation of the Company—if Purinton, Hungerford and Green owned each an interest in that

property, that they should secure to the extent, that they so owned, so many shares of stock in the company, and *then cestui que trusts* would have existed under the trust deed. Then it was vested in that person who held the title, and if held by more than one, then in as many as were such owners. Now Judge Whiton, when upon the stand, as hinted at before, testified that the Supreme Court, reversed the decree made by the Circuit Court of this county, for want of parties. I know not whether that opinion has been written; but I do know what that opinion was. That decree never was reversed, on the points raised and discussed by the appellant, at all. The real point was, that the proper parties were not before the Court, and that these parties were Green and Purinton, who *might* or might not *be cestui qui trusts*, depending upon two facts: First, that the contemplated company had been formed, and second, that they owned a portion of the property, conveyed to Cushing, but upon their own showing, in their answers filed before they were dismissed, it appeared, that no company had been formed under that instrument; but the Court took this view, that they had an apparent interest, from the fact that they had executed the trust deed with Hungerford, and as Hungerford had set out that deed on the face of his bill, and although Mr. Cushing, could not show that he *had complied* with the terms of the trust, yet as they had an "*apparent interest*," they should have been retained parties so that they might show that they were *cestui qui trusts* under the trust deed, and by virtue of which, a company was to have been formed. They said it was an "apparent interest," although it did *not* appear that they had any, in fact, yet having joined in the deed, from that mere fact, they should have been before the Court, so that they could show an interest *even* if Cushing could not. Well, that was running a conclusion up to a pretty high attenuation. We had shown by our proof that they had *no title* whatever in that property.

Mr. Hungerford in his bill, set up the true condition of matters existing between him and Green. He also set up the contract between himself and Purinton, whereby he agreed to convey the one-fourth or five-sixths of that property when he, Hungerford, should receive out of the profits of the one-fourth, or five-sixths such or such a sum of money. That event had not happened.—The bill was taken as confessed, as against Purinton, before he was dismissed. The order was taken while the case was before Judge Whiton.

In addition to that we say that Hungerford was, on the first of October 1846, in the absolute and sole possession, and had been in that possession for months previous to that time; which shows that he had all the title that could rest in any individual, at the time of the execution of the instrument. Then I say that Hungerford could well make the affidavit. And no question was presented for the consideration of the circuit Court of Dane County involving the facts stated in the affidavit.

The statute to which I alluded yesterday, I will now read for the consideration of the Court. This act was approved June 22d, 1838. I shall read so much only as is applicable to this particular affidavit, the language of this act is: "That before any person claiming the benefit of this law shall have a patent for the land, which he may claim by having complied with its provisions, he shall make oath before some person authorized by law to administer the same, which oath with the certificate of the person administering it, shall be filed with the register of the proper land office when the land is applied for,

and by said register sent to the office of the commissioner of public lands, that he entered upon the land which he claims, in his own right, and exclusively for his own benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title, which he might acquire from the government of the United States, should enure to the use or benefit of any one except himself, or *convey or transfer the said land, or the title which he may acquire to the same, to any person or persons whatever, at any subsequent time.*" The act of June 1, 1840, which continued the preceding act, reads, "That the act to grant pre-emption rights to settlers on public lands," approved, June twenty second, eighteen hundred ahd thirty eight, "be, and the same is hereby, continued in full force till the twenty second day of June, eighteen hundred and forty two." Now this is the form of affidavit by this law required.

It was under this law that that affidavit was drawn, and I say there is nothing contained in that trust instrument at all at variance with this affidavit; and the opposite construction originated only in the head of Caleb Cushing and his advisers, on the ground of their hostile feelings to Hungerford, and of their supposition that they could give Hungerford some trouble. Upon those grounds they concluded there was a law in existence by which they could vent their spleen. They therefore proceeded before the grand jury of the "district court" in this state. This act which revived the the act of 1838, till the 22d of June 1840, was continued in force till the 22d of June 1842, when it expired by lapse of time.

Now, it was necessary in order to get a pre-emption right under that law, that the persons should have settled upon the lands claimed, and actually resided upon them on the first day of June, 1840. That was true, in point of fact, in the Hungerford case. But the point raised upon that indictment was this, that the law which required the affidavit to be made had expired, and, consequently, perjury could not be assigned upon it. The Register had no right to administer that oath. That was the point, together with the position, that the Register had no business to come into this State and administer an oath. These were the two points upon which that case went off. Now, it is contended, that Judge Hubbell has violated the statute in this case, because he was the solicitor or attorney for Mr. Hungerford on the indictment; for the reason that it involved, *in part*, the same conclusions of fact and law. Our statute is not extended to a case that involves the same conclusions of fact and of law. The language of the statute is, that the parties must be the same; it must be the *same cause*, for without parties you cannot have a cause. They must be the *same*, not other or different. Let me put a case. Suppose any member of this Court should be counsel for A., and A. should bring a suit against an officer who had levied upon his property by virtue of a tax warrant, and he should carry that suit to judgment. Then, suppose that he is elected judge, and suppose B. sues the same officer, so that the same subject matter is involved—not in part, but the same entire subject matter—that is the validity of that tax. That is the question; and it matters not whether C., D., E. or F., are complainants, the same question is, in fact, involved. Now, let B. set up that this judge is not competent to try the case, because he has been counsel for A. Is that the law of the land; is that the construction of this statute? If so, it is a very singular construction. Why, upon the same principle, you may ex-

clude every judge from passing upon a case where the law has been decided by him in another case; or while at the bar he may have formed an opinion on that case or that law; and because, forsooth, he is a good lawyer, and because he does understand the law, that construction would prohibit him from sitting. The doctrine leads us to the conclusion, that the statute prohibits an intelligent judge from deciding a case; and then, we must, of course, have a set of ignoramuses upon the bench for our judges. There's where the gentleman must land. I say, the statute is not to be construed in that manner.

Take a divorce case. Suppose that any member of this Court had been counsel for A. against B. his wife, and A. should allege adultery as a ground of divorce. Well, what are the questions involved? Why, first, the question of fact involved would be this, whether the adultery was committed; second, whether a decree can be granted. That involves an inquiry into various circumstances; but the questions that arise are, as to the marriage contract and its dissolution. Those are the questions of law involved. But suppose a person should charge cruelty, or habitual drunkenness, or impotency, if you please. These are the questions involved, and therefore a person who had ever been of counsel would be incompetent (if elected judge) to decide upon such a case. The first inquiry is, whether a marriage contract did exist, and the second is whether it ought longer *to exist.*

Let us carry this a little further. Suppose, as I have already supposed, that any member of this Court, should have been counsel for A. against B. and desertion should have been alleged as a cause for divorce. The same legal question would arise, whether there was a marriage contract in existence, and whether it should be dissolved. Desertion would be the cause set up by the complainant for the pnrpose of effecting a dissolution.

Well suppose by some means, that petition should be dismissed. Suppose that nothing was done in the case; and then suppose that after the person, thus engaged as counsel for A., should be elected Judge, and between the same parties precisely, and the same party complainant, should be complainant again and brings a case of divorce before him, and alleges some other cause,—alleges perhaps adultery, different from the other charge, which was desertion, but affecting the parties in the same way.—Would the Judge, under such circumstances, not be competent for the purpose of accomplishing the same object? Certainly, he would. No other construction can be given to this statute, which can be satisfactory to any enlightened mind, than that for which we contend—at least so I apprehend.

Well, it is said in addition to this—and that is the great wrong that has been done—that after having been retained by Mr. Hungerford, in the District Court of the United States, the respondent sat as judge in the Supreme Court in the Cushing case; although the United States is plaintiff against Hungerford in one case, and in the other, Hungerford is plaintiff and Cushing is defendant. Certainly, these are not the *same* parties. It is not the same issue. The two cases in no way required the same determination; yet it is alleged that the respondent has gone contrary to law, and his duty in the premises. Well, I would like to know whether the gentlemen have *any statute* for that. Where is the statute announcing that a judge of the Supreme Court is inhibited from sitting in such case. Is there no difference between a Circuit Court judge, and a Supreme Court judge.

Mr. RYAN. There was not much then, I believe.

Mr. KNOWLTON. It may be so. It may be there was no difference between a Supreme Court judge and a Circuit Court judge. I understand that there is a vast difference; when the respondent was acting in the capacity of Supreme Court judge he was not acting in the capacity of Circuit judge. When acting as a Circuit Court judge he acts alone. When acting in the capacity of a Supreme Court judge he acts in concert with others; and it required four to constitute a quorum in the Supreme Court. I ask, then, whether they are the same by operation of the statute. By the constitution the judges of the Circuit Courts became judges of the Supreme Court. They became judges of the Supreme Court by a positive declaration in the constitution. They were to remain judges for five years, and *after* five years, unless the legislature should otherwise provide; and yet there is no difference between a Circuit judge who acts alone, who exercises all the functions of that office alone; and he can do nothing on the Supreme bench without three with him; excepting, perhaps, to adjourn. He could hear no cause, determine no action, adjudicate no question whatever; yet it is contended that there is no difference, because the *men* are the same. Well, the members of *this Senate* and of *this Court* are the same identical persons, and, therefore, there is no difference between being a legislator and a judge. They are different offices, entirely, and it matters not whether they hold both these offices or not; or whether because the constitution declares that a legislator shall be judge of a particular court. It is the same thing; there is no difference. Why is it that in the constitution they use the term Supreme Court, and judges of the Supreme Court, and judges of the Circuit Court, unless there is a difference. There must be a difference in the judges if there is a difference in the court.

They cannot be identical and the same, and I say that so far as this statute is concerned, there is nothing alleged in this specification that shows any violation of the statute of the State. But though I may be wrong in relation to this, if this is not the construction, nevertheless, I say, the facts show that Judge Hubbell had a perfect right to engage for Mr. Hungerford, and that his engagement for Hungerford in no manner affected his right to sit, either in the Circuit Court, or upon the supreme bench, in a case wherein Hungerford was complainant and Cushing was a defendant. It is not within the statute; and not being *within* the statute, as a matter of course it cannot be said that it is *contrary to the statute.*

I now pass to the 3d specification of this article, and that is the case of Wm. L. Hart, against Eliza A. Hart.

It is alleged that she "had never been in the United States," &c. (Mr. Knowlton read the specification.) Well, now, in the first place it is alleged that Judge Hubbell had been retained by Wm. L. Hart to obtain for him a divorce from his wife and had made an application for such divorce to the Hon. David Irvin, in the District Court of the county of Rock. Now I might rest this case upon that declaration alone.—Have they ever shown that that case was commenced in the District Court of Rock county? I say they have not; and whatever may have been the proceeding there, they have not established the allegation.—It is a variance of proof, and of a material character. They have failed to establish the fact whether the case was commenced there or not. The proof is variant, and as a matter of course it is a good legal objection, and it does not

entitle them to insist upon this specification. *Now I make this declaration* because I have a right to insist upon *it in this Court* as well as in any *other* Courts of Impeachment were instituted *not for* the purpose of making law, but for the purpose of enforcing law. They are not entitled to disregard the existing law and set up something else. They are bound by the law as much as any Court, and the rights of the parties are the same in this Court in relation to proof as in any other Court; and we all know this rule is held in criminal cases, much stricter than in civil cases.

We are entitled at the bar of this Court, to urge objections that might appear frivolous in a civil action between individuals. Another reason why we can urge this objection here with peculiar force, is, that when they describe an action, which has been commenced in a particular Court, or place, it is necessary for them to prove that action commenced; because it is to be remembered that the respondent is not to be tried upon any *other* than *that* charge. He is not to be tried upon any other matter whatever. It will be sufficient for us to answer charges when they are preferred. Very well, I have considered this charge, and I think this consideration most effectually disposes of this Specification.

But I will now examine it in a different point of view; because I wish to examine it in all its various phas s, and then ascertain what has been made out of it. I will now suppose that the proof they have now exhibited, does show that Hart did once institute proceedings in the county of Rock, for the purpose of getting a divorce. I will suppose that state of the case to exist, although in point of fact it appears not to be so. I will suppose Judge Hubbell was retained by Mr. Hart, to obtain that divorce; and I will suppose that Judge Irvin did refuse to grant that divorce for the reason that the wife had never been in the territory; and then I will suppose that that objection which the counsel opposed maintains would follow, is well taken under the statute. After alleging that Judge Irvin, of the District Court of that county, had decided that he could not grant a divorce, on the ground that the wife had never been in the territory, it is only upon the hypothesis that she had not been in the territory, that he could not entertain jurisdiction in such cases; and that it is said, is the reason why that this decree was improvidently made. I suppose it is on no other hypothesis. Well, if it is "improvident," it is sanctioned by the Supreme Court of this State. They authorize divorces in precisely such cases. If that is an improvident decree, so far as that question is concerned, then unquestionably the Supreme Court of this State here passed an improvident decree; and the first we shall know, all the members of that tribunal will be brought here on an impeachment. I refer to the case of Manly against Manly. It was presented for the consideration of the Court, and as the opinion is not lengthy, I will endeavor to read it. The appellant filed his bill for a divorce, Judges Whiton and Larrabee dissenting.—(Mr. Knowlton read the opinion.)

Then I say, that if the decree in the Hart case, was improvident upon the principle stated here in this specification, the Supreme Court has been alike guilty of an improvident act. I understand, however, that this decision, which I have read as applicable to this specification, settles the law of this State upon that particular subject. The only other reason why it can be said that this decree was improvidently made, was because Judge Hubbell had been retained by Hart. Now it is not alleged that the *causes* in the former bill were the *same* set up in the bill for divorce which was filed by this man, Albert Smith. But he testi-

fies that he did not set up the same grounds of divorce as was contained in the one that was filed in the county of Rock. Then I say upon the face of this specification, that Judge Hubbell was not within the inhibition of the statute at all. And if they do not show that fact, they are not entitled to prove this specification, by any evidence.

Well, when we come to the proof, we find that the bill was upon a different basis. Mr. Albert Smith says, that although he received the papers from Judge Hubbell, he put up an altogether different ground of divorce. He thought there was no ground in the old petition, upon which we could get a divorce. He therefore set up a new and independent ground, and that ground was not within the knowledge of Judge Hubbell, previously—that is, so far as we have any evidence. Now that is what he testifies. Well, what was that bill based upon? Why, Mr. Albert Smith informs us that that bill was based upon the facts contained in the letters from Hart's wife to him, which Judge Hubbell had never seen. He had heard of them, when he handed over these papers, and told him he would send Hart to him. Well, he told him in relation to the letters, that probably he could get something from them, and after examining the letters, and Hart had engaged Smith, he ascertained that there were facts in existence upon which he could obtain a divorce. It was upon different grounds, a different state of the case, and a different investigation of the facts. As a matter of course then, as you have different facts, the law applicable to the facts is different; because you can have law appropriate to facts, and facts appropriate to law. Then I say the ground was different from that stated in the old papers which had been drafted by Judge Hubbell, and therefore I suppose that in the second bill the charge upon which divorce was sought might not be established, or might be sustained, and then the result would have been the same. The marriage contract would be dissolved upon the establishment of the fact of adultery, if that was charged. Now he alleges facts that will have the effect to bring about the same result, but which facts were different from those alleged in the old petition. Still, the result was the same.

That is so in all divorce cases; that is, so far as an absolute dissolution of the marriage contract is concerned. And under our statute such absolute dissolution may take place for wilful desertion. Having had a discussion about making and dissolving the bonds of matrimony, they were authorized to take such decree, or to stop short and be content with the passing a decree *divorcing* from bed and board. It is final and conclusive in such particular case. Although the result would not be the same, the enquiry into facts would perhaps be entirely different. The case may have a different termination where adultery is charged, than where you have filed a petition for divorce on the ground of drunkenness, or any basis other than adultery. Now, suppose drunkenness is charged as the ground, and that *that* proceeding should fail, and afterward adultery should be charged in a new bill by the same plantiff against the same defendant, could you then say, that it is the same case? The language of the statute is, "cause or causes thereto." It must be the *same* cause upon the *same state of facts*, and between the same parties, and not some cause between the same parties based upon a *different state of facts*; because if you had not a case based upon *different* facts, and the Judge had been of counsel for one of the parties, I apprehend he could not sit. Suppose that A. sues B. upon a promissory note; and suppose that Judge Hubbell, in the district Courts of the

Territory had been counsel for A. and the cause had proceeded to the joining of an issue, and then the state government had commenced. Now we will suppose that that suit passed into his Circuit Court.—Well, the statute interposes an inhibition in that case, because he has been counsel for one of the parties to that particular cause. But suppose that A. who was formerly his client, should commence an action upon a bond against the same party. I ask whether Judge Hubbell would not be competent to try an action between these same parties upon the bond? Certainly. Suppose it is *another* promissory note, you would, then have a different note, which is *the fact* upon which the case rests. Now Judge Hubbell would be competent to try that suit, most unquestionably. It is not because the same individuals are before the Court, it is because the same individuals in the same identical cause are before the Court, that warrants an application of this statute inhibition.

Suppose, however, we are wrong about that; I ask, if this statute is not susceptible of that construction. I ask, whether you may not inquire of the best lawyers in this State, and I venture the assertion, that six out of every ten will agree in the construction I have placed upon this language. Then, I say, that although Judge Hubbell may have mistaken the law, yet there is nothing in this case that warrants us in coming to the conclusion that he was criminal atall, or that he had any improper motives at all. It is not because he happens to have miscontrued the law, that he is amenable to this tribunal; it is the *intention* that must go with the act, to the end that he may be convicted.

Now, I have said this much upon the hypothesis that Judge Hubbell was perfectly aware of this statute, that he was perfectly conscious of its existence, *and that there was an inhibition.* He may not have been aware of this statute, and he may have supposed that that bill might as well be filed there as anywhere; but when he came to examine this petition—and he could examine it very readily—and when he did so, discovered grounds for a divorce entirely different from those he had advised upon. Mr. Smith, when he filed Hart's petition, although he is an extraordinarily great man, who has no superior, at least in his own estimation, and who came very near upsetting this Court before he came here, I say, that at *that time* he did not possess all this extraordinary knowledge; and, setting up a different state of facts, he went to see Judge Hubbell. He wanted to ascertain the form; and when the Judge had examined the facts, he could very rationally conclude that he could properly try the case, and need not send it off. If he was aware of the existence of this statute, he must have come to the conclusion, that it was not within the inhibition; but if he was mistaken—unless he had improper motives—he is not amenable to this tribunal. Very well, then, that should dispose of it, itself, even if you admit the fact that he had been of counsel for Hart, and had filed a petition in the county of Rock. But although that would dispose of it, we will not stop here. I have already shown that no such suit had ever been commenced; and, of course, we shall leave for the gentleman to demonstrate to this Court—to demonstrate how it is that there can be a cause when there is no suit. I suppose it is necessary to commence a suit, to the end that there may be a cause; and if the counsel succeeds in showing the contrary, unquestionably he should have a medal. Every cause must have parties; then, upon this hypothesis, I say, and I am examining this specification so far as to show that upon these two grounds this matter is for ever set at rest. But I will go further. We will

suppose that Judge Hubbell was not aware of this statute. It had been recently passed; a short time before that he had been elected to the bench. The reasonable presumption then is, that he might not have been aware of it. I generally keep well posted up, I believe, as most lawyers do in this State with new enactments, and yet it was months, perhaps a year, before I was aware of this inhibition. I will venture the assertion that you might have inquired of all the lawyers in this State, and not one in ten of them would have known two years after its passage that that inhibition existed; and if he was not conscious that that was the law, you cannot, of course, say that he was guilty of a crime, when he adjudicated a case that he supposed he had a right to adjudicate.

Now, to show how easy it is to forget. Two very similar circumstances occurred in this Court; and yet no member will accuse his fellow in that transaction; and I am perfectly satisfied that every member thought he was doing what was proper and right, according to the law of the land, and the constitution of the State. In the outset of these proceedings you were sworn to try this impeachment according to the constitution. These were *the things* that the members of this Court were severally sworn to try, and nothing else. Subsequently they admitted a new article; the Assembly, through the Managers, introduced a new charge, setting up a case commenced in a different county, although between the same parties. It was doubtful whether it was proper to admit a specification as to that case. It was a matter of an entirely different character; and yet, the members of this Court admitted the specification, and not one of them were sworn to try that matter; none of them sworn, as the constitution provides, to try that particular specification. How easy then it is for a man not to be aware at a given time of the existence of a particular law. Here was a constitutional provision—this is a Constitutional Court; and only a few days before, it had taken an oath to try an impeachment; and yet pending the trial, it did not occur to the members of the Court that it was necessary to be re-sworn. Members of the Court may now think it was not necessary.

I say that was an open question. Suppose the Supreme Court of the State, should hereafter be called upon to decide that question. I ask whether they would hold, that it was constitutional to try that specification, without the members of this Court having been sworn. I apprehend not. But whether that was right or wrong, whether they should have been sworn or not, I venture the assertion, that no member of the Court thought at the time, one word about whether it was, or was not necessary to be sworn. I undertake to establish the fact by this incident, that however well versed in law a man may be, he may not remember at a given time, that a certain law was in existence. Then Judge Hubbell may not have been aware of that law. Then he certainly could not have had a wrongful intent; and if so, it is not possible that he can be convicted upon this specification, nor upon any other, because *intention*, is the great thing in impeachable matters.

Then I have arrived at three conclusions, any of which, dispose of this matter. I have yet another, and that is the same position that I assumed in the case of Graham against Humble, that in this case there was no issue. The defendant had not appeared, there was no issue of law, or of fact. It required no determination upon conflicting evidence, or the sufficiency of any pleading. It was a matter of course proceeding, from beginning to end. Judge Hubbell was under no obligation to receive any kind of testimony in this case.

The petition could have been taken as confessed under the statute then in existence, and if he chose he could have entered up a decree which would have been—free from error—final and conclusive as any that could have been made upon testimony. They have introduced the extracts from her letters, which showed her determination to abandon her husband, and never to come to this country to reside with him. It matters not how that testimony was obtained and submitted to Judge Hubbell. It was testimony presented for consideration, and, in my humble opinion, it was proper; for, although we concede it was not proper testimony, it was to be received, and to have such weight as it was entitled to. As a matter of course, he could reject it all, and then he had the authority under the statute to sit, and enter a decree; because, I take it that this proceeding for a divorce under the old statute, was to be considered a chancery proceeding; and by the 44th section of the statutes of 1839, which provides for proceedings in court of chancery, it is provided that decrees may be made and entered where the bill is taken as confessed, without any evidence whatever.

The complainant may take testimony, or go to a decree without it. Then, I say, it required no adjudication such as is contemplated in the statute containing this inhibition. There was no trial as contemplated there. The language is—"said Judge shall not have power to *hear* and *determine* such cause or causes."

It means a trial, a disposition of a case upon an issue of fact; not merely an issue of law, but an issue of fact joined between the parties; and as there was no appearance of Mrs. Hart, this case was not within the inhibition at all. But suppose it was, I ask if any man, no matter how good a lawyer he may be, might not conclude, that it was not a case within it, and that a judge would have legitimate authority to preside. Now, I venture the assertion, that take all the lawyers in this State, and eight out of every ten of them, will agree that the Judge had the right to preside; so if we admit that proceeding were commenced in Rock county, and also admit that Judge Hubbell was retained in the same cause, and admit further that he was cognizant at the time that the inhibition of the statute was in force—which, however, he had good reason at the time to suppose was not in force—if we suppose all those questions admitted and settled, then this last position alone is sufficient to dispose of this motion in favor of the respondent.

But another thing is thrown in here, and that is, that Judge Hubbell gave testimony of certain things in said cause, which he had done by virtue of his retainer. I think the proof negatives the fact. Judge Hubbell went before the Commissioner at the request of the solicitor for the complainant and did testify simply to this, that he had written to the wife of Hart at his solicitation for the purpose of inducing her to come to this country, stating that he was in a condition to give her a home that was comfortable and suitable to her condition in life. That was the substance of Judge Hubbell's testimony before the Commissioner. It was a fact that could be proved by nobody else.—It was a letter written by the request of Mr. Hart. It was not necessary to go there, because the letters of Hart's wife showed, that she did not intend to follow him to this country—in other words, she wished to control her husband and direct him. Whereever she chose to domicile herself, he must be content. I say, her letters had a tendency to show that state of the case; but if he had had no letters, I still insist

that there being no appearance, Judge Hubbell had a right to pass that decree. Now, whether Judge Hubbell was competent as a witness or not, it appears that some conversation passed between him and Smith. He remarked that he supposed that he was competent to give his testimony. Smith replied that he supposed he was. He was not at that time aware of anything wrong in Judge Hubbell's going before the commissioner. It did not occur to him—on the contrary, Judge Hubbell remarks—"there is no objection, I suppose, to my being sworn." He entertained that opinion honestly. He supposed the law was the reverse of what will be contended on the opposite side.

If Judge Hubbell was conscious that that course would be wrong, would he throw himself into the lion's mouth? It is quite immaterial whether Judge Hubbell was correct or not, in regard to that matter. He might well have considered the analogy that exists between a Judge, and that of a juror, or jurors being sworn in relation to matters of fact, which they must decide.—It is a matter of every day's experience, that a juror is called from the jury box to testify in relation to facts. In the State of New York, I have seen Judges called and sworn, to testify in causes they were trying. But here is a law, (as is contended,) that inhibits a Judge. Possibly he could not swear in a cause pending before himself, being a sole Judge, for the reason that he could not administer the proper oath, but he could go before an officer authorized to administer the oath, and be by him sworn, and then testify. Where is the law that inhibits, although he is the sole Judge?—Will the gentleman show that law? I suppose they rely upon Greenleaf upon Evidence, or something of that sort. In relation to Greenleaf, when you come to examine the authorities he cites to support the doctrine he lays down, you will find that the text is not supported by them at all. The author cites a Louisiana decision, which I have examined, and find that the Court held as stated, but the Court based the opinion upon an express prohibition in the Spanish law, and although they held that the Judge below decided correctly, yet they reversed the judgment, and remanded the cause.—The doctrine was held, however, upon the score of an express inhibition, declaring that the Judge *should not be sworn as a witness.* Now if there was any law expressly declaring, that a Judge should not be sworn as a matter of course, he could not be a witness; but examine Tait upon evidence, and I think you will find the Scotch law also an express prohibition upon the Judge. Although Greenleaf undertakes to sustain the text by citing some decision in England upon that subject; when you come to examine the decision, it has anything else in it, than the rule of Greenleaf; so that Greenleaf is entirely mistaken, on these authorities. I say it is a common practice in the State of New York, and in my opinion it is a very correct practice, to receive testimony of Judges in the causes they are trying; at least, it is no more improper than to receive the evidence of jurors. The position of the Judge, or of a juror, may go to the credibility, but not to the competency at all, in either case. Let us suppose it were necessary under our law, to prove the signature of the maker of a note. We will suppose the Judge is the subscribing witness and that by the law of the land, it is necessary to prove the signature of the maker and subscribing witness, and that the cause is before the Judge for trial. Now, I ask, what is to be done in that case? Is there any member of this Court who can tell me? Is there any provision in our laws, that in such a case, a judge shall send that cause to another Circuit or Court. On the contrary have not

the complainant and defendant a right in this State, to demand of him, to sit and try that cause.

I say the law will not authorize him to send that case into another county at all.—He is under obligation to do no such thing. If he should send the case to another county, there must be some law for sending it there, or the judgment in the case would be good for nothing, and therefore, the Judge would be under obligations to sit in that cause; else it would hang forever in the Court, and parties never would get their rights unless the Judge may try the cause upon his own testimony. It then only goes to his credibility, as it would to the credibility of a juror who was sitting to decide a case. I think then, that this of itself would dispose of this charge, so far as that question is concerned. It is alleged, I believe, although that is put in by way of addition, that he did testify in the case. It is for the very express purpose of talking and saying "here is a Judge who has been counsel for one of the parties and has been sworn as a witness in the case; and after having been counsel and witness, then he sat in the case and rendered judgment upon his own testimony or passed a decree." I understand well enough what the object is But what does it amount to? The real question is, what is the law? If the law was different from what the practice was in those Courts, did he know he was acting contrary to the law. Did he act from improper motives?—This Court is not to decide this case from the amount of words that may be used, nor from the amount of abuse that may be heaped upon any individual. I ask whether they have established the fact, that Judge Hubbell was ever retained to commence this suit in the county of Rock. I say that that fact is not established, and I will state why I think it is not established. The only evidence they have in relation to this, is the testimony of Albert Smith, in connection with the old proceeding and the letter of Judge Hubbell.

Smith comes upon the stand, and you never saw a man more confident than that gentleman was, when he came upon the stand. He undertook to satisfy this Court, that he stated the precise words that were used by Judge Hubbell on that occasion. We all know that the memory of man is quite inadequate to the task of remembering the precise language which a person might use that length of time ago. There was nothing peculiar about it that should impress it upon his mind at all, and the language used, he says himself, he had not thought about till he was interrogated in relation to the matter last winter. In the first place, he does say that Judge Hubbell told him that he had once been retained by Mr. Hart; that Hart had paid him in that matter, and would pay Smith. But come to the cross examination; come to bring him down to the point, and ask him if he was sure he used the exact language of Judge Hubbell, and what does say. He says that the language used was, that Hart was a business man, had paid him, and would pay him (Smith.) Does that declaration show for what he had paid him? Was it for writing the letter to Hart's wife, or was it for the land business he had done for him? Perhaps so; or it might have been for something else. We do not know what it was for. But Smith does not dare to say that Judge Hubbell did state that he had been paid by Mr. Hart in that case. Now, it is in evidence before this Court, by the testimony of John Hart, the administrator of Hart's estate, that his brother was a careful man, in relation to his business, that he was in the habit of taking receipts when he had paid out money. He had searched his papers, and although

he finds a large bundle of receipts, he can find no receipt from Judge Hubbell whatever.

He can find receipts from Cross and Smith, and various other receipts where he had paid out money—but he can find no receipt from the Judge, whatever, showing that he had ever paid him money. Is it not a little singular that a close, careful, business man; in the habit of taking receipts should have taken nothing of the kind from Judge Hubbell if he had paid him money for his services, and is it not more than likely that Smith is mistaken? I think it is altogether the most likely, and this is a species of evidence that should always be received with caution, and acted upon with great suspicion. What is the rule of law upon that subject? I read from the 1st of Greenleaf, 256. (Mr. K. read the law upon this point.)

So we see the propriety of the rule, that this kind of evidence should be received and acted on with caution—a witness may misunderstand—he may misrepresent—he may clothe the idea with his own language, thereby giving a meaning directly the reverse of what the speaker intended. That is frequently the case, and Mr. Smith is the very man that would be likely to do so. He came here with hostile feelings prompting him, and visible as it appeared, that he wanted to make all he could out of little or nothing. I say we are not to attach that credit to his testimony that we would if he was on friendly terms with the respondent. I say a witness who says "that is my recollection of the matter," is entitled to a great deal more credit than a man who undertakes to be positive like Mr. Smith. At all events, he is very likely to be mistaken in this case, because Hart would very likely have taken a voucher if Judge Hubbell had paid him any money.

What is there now of that letter to Judge Irvin? Why, a petition had been sent down for filing in the District Court to commence a cause thereon, Judge Hubbell had drawn it, and put his name upon it as attorney, although he may not have been attorney in the case. That is every day's practice. It is done every day. I have drawn answers and bills, and signed papers in cases where I was not retained and which were sent to another county, and not received the least compensation for it. That is very common indeed, and every lawyer knows that he is inthe habit of doing acts of this kind—that is, unless he was one of the shylock breed and would have his reward for every trivial professional act; but if he was a liberal practitioner he would do that for a friend and never think of charging for it. Now unquestionably he did put his name upon this petition and drew it. Well, put all the circumstances together and it is quite obvious that this was the case—that he signed as attorney out of mere friendship.

It appears that Judge Hubbell and this Mr. Hart had been for some time upon friendly terms. Judge Hubbell may have commenced this proceeding as an experiment to get Hart's wife here. Hart was unable to carry on his land contracts unless he could get relieved from his wife, or unless she would come here. They could well try that experiment, and if it resulted in nothing, Judge Hubbell would never think of charging him anything, even if he calculated to charge him if it succeeded. In this case Judge Hubbell asserts that he never did charge him anything and never expected to receive anything for it, and John Hart swears that he never presented any claim against that estate. Then I say it is quite obvious that Judge Hubbell never understood

that he occupied the position of an attorney for Mr. Hart to procure a divorce; but I say if he did, it was upon different grounds from that which did exist, and upon which the decree was finally granted, and the inhibition does not apply. Whatever might have been the relation between Judge Hubbell and Mr. Hart, if he was about to do an improper act, I ask whether he would have placed that letter which he wrote to Judge Irvin in the hands of Smith. And then having made the decree, whether he would have left the original papers which he had drawn in the possession of Smith. If he had any wrongful intent is it to be presumed that he would thus have left the evidence to operate and bring about his conviction of that improper or corrupt act. Would he not rather have taken them again from Mr. Smith? Would he in fact ever have presented them to Smith if he had an idea that his conduct was in the least improper?—Certainly not. No man in his senses would have thus placed in the hands of one who might sometime be his accuser, documents from which his guilt might be inferred or established. No corrupt man does that; but let me tell you that corrupt men calculate on intrigue and try to hide. They never place the evidence of their guilt in the hands of others, especially evidence of the impeachable kind. They never do it; never!

So far as endorsing papers is concerned, the case of Judge Chandler is in point. He testifies that he signed the answer of Chas. I. Kane as counsel—that *that* is his signature upon the answer of Kane, and yet he tells you, that he never was retained in that case by Kane, that it was a mere matter of friendship on his part, performed at the suggestion of Cogswell, and yet it is just as strongly established that he was retained by Kane as it is that Judge Hubbell was retained by Mr. Hart to get this divorce.

Another thing is worthy of notice here. Although there appeared to be pretty strong evidence that Judge Hubbell had been retained by Charles I. Kane, when Kane was upon the stand he proved the fact positively that he never did retain Judge Hubbell; and so if Hart was now living we could prove the same fact by him, but we are unable to avail ourselves of his testimony, and forsooth, because we cannot bring him from the grave to prove that fact, the prosecution are so charitable as to ask for a conviction upon this specification! I say the Court can account for that act upon the hypothesis of his not doing a wrongful act.

It is their duty to do it. The intention must have existed to have done wrong, and I say in this particular case as the only witness to the fact is dead, this Court is under obligations in view of the circumstances to acquit him. Whatever the testimony may be, and however strongly they might be inclined to the opinion that the case came within the statutory provision; yet the Respondent should go acquitted of this charge for the reason that an overruling Providence has put it out of our power to prove his innocence. Not so in the case of Kane.—In that case we procured Kane and proved the facts. And in the case of Kane the testimony was stronger against him than in this case of Hart. In that case Judge Hubbell drew Kane's answer; yet we have proved the negative in that case, and if the proper and only witness was living we could prove it in this case; because when all the witnesses by whom facts could beyond doubt have been established are dead—is a man to be convicted because he cannot prove himself innocent? Now it is an unbending rule of law in cases of this kind, and in all criminal cases, that if you can account for the act

upon any other hypothesis, than that of the guilt of the accused, you are bound to do it, and if any other hypothesis may be true then the case is made out.

I pass on now to the next case—the 5th specification, the 4th being abandoned. The fifth is in relation to the demurrer to the indictment against Charles L. Kane for perjury. Now in that case it appears that the State of Wisconsin was the party complanant, and Kane the defendant; and although it is alleged in this specification that Judge Hubbell had been of counsel on the subject matter, yet it does not appear that it was within the inhibition of the statute. But it was not the same subject matter —It is a particular cause not between the same parties, because the rights, pro and con, between the complainant and defendant must be established in a particular manner, and between others they might be entirely different. Now this indictment Judge Hubbell did unquestionably pass upon, and I think no lawyer who would reflect a single moment would say he was not perfectly competent to pass upon it. Kane demurred, and the simple question was, whether the indictment was sufficient in law. Judge Hubbell did hold that it was not sufficient, and he very properly held it. The counsel will not interpose the argument that that decision of Judge Hubbell was wrong, but will concede that he made a correct decision. The gentleman thinks he decided correctly, and he must contend that it was not an illegal act, except upon the hypothesis that it was illegal to do what was right. Now Kane comes upon the stand and swears that Judge Hubbell never was counsel for him upon the subject matter upon which the indictment was based. Then, although the statute does inhibit the Judge from sitting where the same subject matter *is not* in the case, but upon the particular cause or causes in which he has been counsel for *either* of *the parties*, then the prosecution must fail. This was the State of Wisconsin against *one* of the parties on a different subject matter. It was a criminal proceeding and how you are going to make out that it is the same subject matter and between the same parties, is what I don't understand. I understand they are different causes.

There are two specifications here that amount to the same thing. Kane's testimony in the matter entirely disposes of them both. It is unnecessary then to spend any time upon the 6th specification.

The next article is the fifth and the first specification, as the case of McBride against the Comstocks. That is the case where Mr. McArthur appears to have been the counsel, and it was with his assent that Judge Hubbell took the money; and the money was forthcoming at the time the matter was disposed of.

And so too, in the next specification, the case that occurred in this county, where Judge Vilas and others were complainants, and Corwith and others defendants. It seems to have been with the consent of parties here too, that the money was taken, and in this case also the money was forthcoming when the case was decided. It is not even contended that the causes were delayed any longer on account of the Judge's having the money. It is not necessary to spend any time upon it. It is calculated to insult this Court to talk about a matter to which there is so little evidence.

The next article is the 6th. The first specification relates to a certain cause in chancery instituted against the Wisconsin Marine and Fire Insurance company. Mr. Mitchell has been upon the stand and testifies in relation to that

case, and it does not appear that Judge Hubbell has done any thing more than what any good Judge should do under the circumstances. It appears that he had been applied to, to shut up an institution wherein many of the people were interested, and who might lose thereby, but the Judge did not feel inclined to grant an injunction until notice had been given of a hearing of the motion. The party plaintiff did not choose to give notice of a hearing; but went up into Washington county and applied for an injunction; and there the matter is still pending, for aught we know. It appears that Mr. Mitchell was anxious in relation to the matter, on account of the effect an injunction might have upon those who might have his paper in their hands.

He had been advised by his counsel to disobey the injunction, and he conveyed that information to Judge Hubbell, who advised him on the contrary, to obey the process of the Circuit Court of Washington county.—However ruinous it might have been it should have been obeyed. The jurisdiction on account of the location of the institution is one that parties defendant had no right to dispose of by disobedience. And that was the basis of the advice given by Mr. Ryan, Mitchell's counsel.

I think the advice of Judge Hubbell was altogether the most commendable. It was dangerous to set a precedent of disobedience to a process of the Court. Mr. Mitchell seemed to be in difficulty upon the subject. If he obeyed it, he did not see how he could redeem his notes—he did not know what to do. Judge Hubbell says to him, "if an injunction does come, I will come back from Madison and hear a motion to dissolve it." Well, in a matter of as much importance as that to the people, having the bills of that institution in their hands, I think it was the duty of Judge Hubbell to take prompt action concerning it. Mitchell says, however, that he did not promise to dissolve the injunction, although he thought he would probably be disposed to do so. He did not say what he would do, only that he would come back and hold Court, riding day and night to do so, if necessary. I suppose he had a perfect right to do so, and it would have been no more than his duty, as a judge, obliged him to do.

The next Specification relates to the case of Dr. Greves. The Doctor has been upon the stand, in relation to that matter; but from his testimony it does not appear that Judge Hubbell made any promises in relation to that matter. It appears that Dr. Greves in talking the matter over, told his grievances, as an electioneering story. Judge Hubbell made the remark in reply, something to the effect "that it was scandalous," that is, that the conduct of Finch, if true, was scandalous, and he asked the Doctor, if he was going to let it rest as it stood. He then informed Judge Hubbell and the rest of the company—for he made the statement generally to the company—that he would prosecute it further, but he feared his lawyers might favor Mr. Finch, and he did not know that he dared to risk them, to make a motion. Judge Hubbell then suggested Mr. Ryan, Mr. Watkins, and I do not know but others, as not being disposed to favor Mr. Finch and said that they were very proper individuals to undertake a matter of that kind. Mr. Ryan afterwards did draw an affidavit, to set aside the judgment. It is not necessary to spend any time upon that, because Judge Hubbell never did anything in that matter to favor anybody, nor to get any advantage himself, nor to prejudice anybody else.

The next case is that of Craft against his wife, for divorce. The next specification concerning the Judge's allowing suitors and their friends to talk to him

about cases in Court. All the testimony that amounts to anything in that case is that of Elmore. His testimony is, that he was acting in behalf of Craft, and that he went up to Appleton to take testimony; and after he had taken testimony to some extent—the principal witness being away from that place—Elmore brought the testimony he had taken down himself to the clerk. The clerk said he had no authority to open it, but that the Judge could open it; and Elmore wanted the Judge to examine it to see whether it was necessary to take any further testimony. He took it to the Judge, who opened it, and jocosely remarked that he might read it to his wife—which he did; and before it was half through, she was for deciding that it was entirely sufficient. After it was through, the Judge told him that unless there was opposing testimony, he would not put him to the trouble of going to Appleton to get any further testimony.

I believe I never obtained but one divorce in my life, where I did not inquire of the Judge whether any more testimony would be required to sustain the petition; and yet I did not suppose the Judge thought I was corrupting him; and when I told him that the evidence was uncontradicted, I supposed that there was no impropriety in it whatever. I think Mr. Elmore's testimony in relation to that matter, effectually and fully disposed of by that specification, under the particular charge.

The next matter that comes up for consideration is the 7th Article: "That the said Levi Hubbell," &c. (Mr. Knowlton read the article.) The first case under that article is that of Baasen against Anderson, where the Judge refused to hold a special term for the purpose of confirming a sale on foreclosure. Mr. Mariner is the principal witness in that case. It appears that he went at the suggestion of Amos Sawyer, to induce the Judge to hold a special term, but the Judge declined doing so, on the ground that it was a matter of favor and not of duty; and that Kilbourn had injured him; and that those who had said and done the most against him, were the first to ask favors of him. That is, unquestionably, so; Judge Hubbell is not so destitute of common sense, as not to know that those who abused the most are always asking for the most favors of those whom they have trampled under their feet. He refused to hold the special term to accommodate Kilbourn. It was after sun-set when Mr. Mariner wanted him to go down. In the evening, after Mariner's visit, Mr. Sawyer saw him in relation to the same matter, and he promised to hold the special term for his accommodation. It further appears in testimony, from some of the witnesses, that he was down every day at 10 o'clock, prepared to do business at the court-house. It appears also, that this sale was not confirmed that next day, but passed over till the second day, and then it was confirmed. I do not know that there was any unjust partiality or favor in this matter towards Mr. Sawyer, or Kilbourn—none whatever. I apprehend he could go if he chose, and hold the desired term; if not, no one could complain. It was nota duty binding upon him, and refusal was not then a violation of duty. As a matter of favor, he could go for anybody; and there is unquestionably no judge in this state who has done so many favors, and put himself so much out of the way to accommodate parties in relation to matters of this kind as Judge Hubbell.

Specification second, is in relation to the private and indecent interview of which we have heard so much—an interview with Mrs. Howe, concerning an

indictment against her husband for perjury. It has been contended here that that charge is sustained. They rely upon the testimony of Mr. Finch. He testifies that he went into Holliday's room, and saw Mrs. Howe sitting upon the bed, and by the side of Mrs. Howe he saw an indentation in the bed, and Judge Hubbell coming towards the door from the bed. The Judge requested Finch to walk in, assuring him that there was nothing private. Mr. Finch concluded not to do so, but bowed himself most respectfully out of the room. Did he see anything else? That certainly is all that appears in the testimony. Now, I want to know whether it is absolutely indecent for a man and woman to be together; that's the first position to be established. I hope the gentleman will mark out a line where decency ends, and indecency commences, in intercourse between man and woman. That is a decision which has long been desired, most unquestionably, and nobody is so competent to that task as the counsel opposed. When this is once established, we shall all know how far we may go, and when we must stop. Then we may know precisely what we may do, and what it will not answer to undertake. I am yet to learn, however, that all that Mr. Finch saw is indecent in any respect.

And now *who made* the hole in that bed by the side of that woman? That is the great matter of surprise in this Specification. It was in a lawyer's private room—and I have yet to learn that lawyers are not in the habit of making such holes. They are a tremendous set of men for making holes in beds. I venture the assertion, that the learned counsel opposed has made as many holes in beds, as any man in this State, considering the length of time he has lived in it; and no man ever supposed he was indictable or censurable for anything of that kind. I do not know whether he has figured much with women, and do not know that it is necessary to ascertain in this case; but Mr. Finch certainly saw nothing except what he has related. He told all he knew, and all he saw; and it amounted to just what I have stated, and nothing more. A private and indecent interview! A private interview is one thing, and an indecent interview is another. The *private* is inferred from the fact, that she and Judge Hubbell were in the room alone; but the *indecent* part of it has not come to light. What is indecent? Is it indecent to sit upon a bed either alone or by the side of a man or woman? Is that indecent? It is not in proof that Judge Hubbell sat there. For aught we know the lady may have made that indentation in the bed herself; or somebody else may have made it.

Well, we come to Mrs. Howe's testimony. What is her testimony? Why, her testimony is, that she went to Judge Hubbell, and had a conversation with him of her own volition. That conversation was brought about by Mr. Holliday, in whose room he supposed he arranged the interview to take place; although it turned out afterwards to be Mr. Arnold's room. Well, she there had an interview, in relation to a suit that had been tried before Judge Hubbell, in which he had not been aware that there had been an endorsement upon a note, which was the subject of the suit, which endorsement ought to have been allowed, but on account of some instruction from the Court, the endorsement was not allowed, and she undertook to explain to Judge Hubbell, how that endorsement was made in order to satisfy him that it ought to have been deducted from the note. The Judge merely told her that if such was the case her husband should get an affidavit of the facts, that Mr. Arnold had subsequently got an affidavit, and moved in the matter, and the endorsement was allowed. I do not remember ether a new trial was granted, but at all events it was settled.

So far as that interview was concerned I do not know as there was anything improper. She had a perfect right to go to Judge Hubbell, and explain that matter of fact, and he had a right to say to her, get somebody to draw an affidavit of the facts, and move to dispose of this matter. During the time she was with Judge Hubbell she says, she was sitting upon a chair and *not* upon the bed. She says when Mr. Finch came into the room, the Judge asked him to walk in, but Mr. Finch put his finger in his mouth and said "ah! ah!" and bowed out of the room. I think she explained this business in a perfectly intelligent and intelligible manner. It appears to me that Finch might get his finger in his mouth, and bow out in a very polite manner, as described by this female. After Mr. Finch had passed out, although Judge Hubbell endeavored to get him to come back, then she was standing by Judge Hubbell, and he put his arm around her and remarked "how small you are!"

It had relation to but one fact connected with this woman in the world—that of her size, at all events—you can make nothing more of it. Well, was that *indecent?* Will the learned counsel undertake to maintain that it is indecent to put his arm around a lady? If he does, the first time he rides out and gets his arm around the lady we will have him up and impeach him for indecent conduct. If that is true, the gentleman himself is caught within less than six months. And I do not know but there are some members of this Court who possess affection enough for females to put their arms around them. They may do it for one purpose or another; but I hope they possess discretion enough to know that if there is any repulse on the part of the female it is quite as well to quit as to proceed. But we are to settle the question of *indecent interviews*; a question, I believe, that never before was presented in a Court of impeachment.—This Court is to have the honor of establishing it. If that is *indecent*, I must acknowledge that I have an imperfect idea of decency. I never supposed that if I put my arm around a female that that was indecent. I had supposed that I must go farther than that, before I bordered upon the indecent; and I believe I meddle as little with females as any man in this State. I am willing to set myself up against the counsel as a model, and challenge the proof—and I *never* supposed that it was indecent to put my arm around a woman. If you were to leave that matter to a jury of women, I do not think one of them would be of the opinion *that* would be indecent, but whether you submit it to a jury of men, or women, I am satisfied they would acquit the respondent of the charge, upon such testimony. Well, the learned counsel diverted himself somewhat by a cross examination of this woman, and he enquires what she said when Judge Hubbell made that remark upon putting his arm around her. She says she told him she came for the purpose of doing business with him, and he must treat her gentlemanly.—What was the reply of Judge Hubbell?—It was the reply of a gentleman—that he did not intend to treat her "in any other manner than as a gentleman." Well, then that did not satisfy the curiosity of the learned counsel. He wished to go farther.—"Why, if you did not think putting his arm around was an indecent proposition, did you reply that way to him?" "As a guard."—What prompted you to be upon your guard, when you previously said that you did not consider his putting his arm around you an indecent proposition?" and she replies, "Oh, human nature!" Now I think she answered the counsel in just about the best language he could have been answered. She says that she says many curious things, and at the same time she says that the Judge made no improper proposition to her.

I am apprehensive she does some smart things and says some smart things; but when you come to sum it all up I think she said, nor did, nothing that savored of impropriety; and whatever she may have said or offered to Judge Hubbell, I say it does show, most conclusively, that Judge Hubbell no more acted indecently toward that female than is every day practised within the bounds of acknowledged propriety. I humbly submit to this Court that that testimony does not show that he was guilty even of the least impropriety.

The next specification is the Wyman divorce case. How do they undertake to establish the fact of collusion in that case?—They undertake to establish it by calling Wyman upon the stand and proving a conversation between him and Judge Hubbell. He was upon the stand twice, and one day he testifies to one thing and the next day to another. His recollection is entirely gone. He cannot recollect his testimony upon the stand, and given on the same day. His memory is of that character that no reliance can be placed upon it. He knew one thing, as will be perceived by the Court, and that is that Judge Hubbell, in conversation with Mr. Wyman in relation to this matter of divorce, has given most clearly to understand that he wanted to get a divorce for himself against his wife. Judge Hubbell, in his response says that he stated to him that he had heard that his wife had, or was about to apply for a divorce, on the ground that he had neglected her, and treated her cruelly, and that if she could establish these facts and get a divorce it would seem to be all that he would need or require. That is the most you can make out of it in any shape or manner; and Mr. Wyman is entitled to no credit, because his memory is too badly at fault; and what is somewhat singular is, that they should establish collusion, when Wyman had no conversation with his wife upon the subject of the divorce. All that was done was done through her friends and his counsel. Mr. Abbott was brought upon the stand. He testifies that there was no collusion to his knowledge. Collins also, knows nothing of collusion. Wyman himself knows nothing about it, because, as he says every thing was done "through friends." —The only thing that appears to have been done within Wyman's knowledge was the matter of alimony.

Mr. Wyman was very anxious to have the sum as low as possible; although he testified to being worth some $8,000 or $9,000. He thought that $300, when he was worth some $8,000 or $9,000, was a tremendous sum of money. That sum was what he was particularly anxious to avoid; and therefore he did direct his counsel to make an arrangement on that point, and the sum of $100 was all that Mr. Wyman had to pay as alimony. He directed his counsel also, to object to any evidence, (and to resist this divorce) if they undertook to establish anything beyond what was set forth in the papers. If they did not undertake to establish anything else than neglect and cruel treatment, the counsel were directed to let the divorce go on. Now he says he was very anxious about that divorce, and his anxiety was so high upon that occasion that I presume he could not recollect what did in fact transpire; although he understood and informed his counsel what they expected to prove against him, yet it did not seem to trouble him at all; even if they had proved his conduct to be dictatorial and cruel, or even proved that he had created a local inflammation by excess in venery. I do say that that kind of abuse is about the most horrid that a man could be guilty of. There was proof of that kind; but it did not disturb his self respect. The attending physician gave his opinion that that disease was

occurred between him and his wife, or at least between her and some body. Then, although the old gentleman came upon the stand for the purpose of telling the truth, yet he shows an incapacity for telling what did transpire; for he could not remember what he had testified from one day to another. How then could he remember what was done in a matter about which he had such great anxiety so long ago as 1848 or 1849. Then I say that so far as this matter of collusion is concerned it is not established by the prosecution. They only relied upon the testimony of Mr. Wyman. I believe the proceedings were in no way erroneous; and the counsel on both sides of that case have been sworn before the Court, and it is by them shown that the proceedings were regular from beginning to end.

It has been contended that the cause could not have been brought in Milwaukee county. I know it to have been the practice under the Territorial government to commence such suits in any county in the Territory. Mr. Collins has testified to that being the practice. It did not occur to him that there was any doubt upon the statute, which expressly declares that this may be done. The general provision is the reverse of that; yet where there is a special provision in relation to a particular matter, the *special* controls the *general*.

Now this, I say, is a rule of construction; and it has been proved that a petition for divorce might, (according to the practice,) have been brought in any county in the Territory; it was proper then for Collins to bring it wherever he chose. Collins testifies that Judge Hubbell had nothing to do with fixing the venue in this matter. He supposes that the reason why the decree was in the hand writing of Judge Hubbell, was that the papers were sent there without a blank decree, and that Judge Hubbell did draw up that decree, as he was very much in the habit of drawing orders or papers in cases for the lawyers. Then I am unable to discover that they establish any collusion in this case.

But I ask, suppose he did personally know that there was collusion between the parties, when he was acting judicially upon the bench, could he take notice of his private knowledge in his decision of the case. Suppose both parties had told him that there was collusion, I ask whether Judge Hubbell, acting in his judicial capacity, has a right to act on his own knowledge, and refuse a matter which he would otherwise grant. I answer, most emphatically, no; and if he had done so then they would have brought in a charge on the opposite ground, complaining that he had undertaken to set up his own private knowledge of something which somebody had told him in the street, and had carried that private knowledge upon the bench, and had dismissed the petition of a party that was entitled to consideration.—That would have been the "*hue and cry*" then. A Judge must rely upon the pleading and upon the evidence. Upon that alone can a Judge act, and act correctly.

They have most singularly failed to establish any such collusion. Mr. Wyman did not know it, for he did not talk with her upon the subject at all; and if not, how could they collude, and why do their counsel testify that they knew nothing of it if there was collusion? Yet it is said, forsooth, that Judge Hubbell knew that there was collusion, and notwithstanding granted the the divorce. Well, if that kind of evidence can establish such a charge, the sooner we get to work and abolish all law the better.

We now come to the case of Barker against Pratt, (4th specification). That is an awful charge, under the proof—perfectly awful! It was an action for debt

brought upon a judgment rendered in the State of Vermont. The complainant brings in a record which purports to be a full and true record of the cause. Upon the part of the defence they introduce a record more full and more complete, which shows that there was something wrong, that there was either error or there was no jurisdiction, and Judge Hubbell told them at the time he rendered this judgment that there appeared to be something wrong, and Pratt's counsel kept insisting that he must continue it under the circumstances, yet Mr. Downer was desirous of obtaining judgment. Judge Hubbell then says "I will give you a judgment in this case in order to secure you the debt, but I will stay execution in order to give the defendant an opportunity to set aside that judgment." By giving the judgment Downer would be safe, as Mr. Pratt had a good farm. He had a lien upon his premises, and in the mean time Pratt could move to set the judgment aside, or he could sue out a writ of error to reverse the judgment in the State of Vermont, if it was improper or erroneous. That was what Judge Hubbell did. He said he would give him a judgment, but he must stay execution. Subsequently and at the same term the order was entered to stay execution. This was correct, because Judge Hubbell had a perfect right to have the record read to him on the last day of the term, if not read previously, so as to see that his orders and declarations were carried out in that matter. It appears that it was not entered that the execution should be stayed. *That it was*, as the clerk testifies, that he entered up the order. That was done in open Court—openly and above board. It appeared that something was wrong from the two transcripts, and in order to secure Downer he entered up a judgment which would be a lien upon Pratt's estate till the matter could be investigated, and then he could set aside the judgment if it was improper. I ask what Court could have done better; and yet it is alleged as a crime against the Respondent. Downer takes a freak into his head, takes his transcript from Vermont and commences a suit in the Court of the District Court of the United States, and there he expects he will bring Mr. Pratt up and make him respond in a very speedy way. He therefore declares in debt on the two judgments—the one rendered by Judge Hubbell and the one rendered in Vermont—counts on both in his declaration; and what does Judge Miller do? Why, not so much as Judge Hubbell had done. He did not even give judgment, but stayed proceeding till the matter could be settled in Vermont. And I am informed he has this very morning renewed that order, until further ordered. At all events he has made the order. And is it to be said that both Judges are corrupt. He has got a lien upon the estate of Mr. Pratt which is ample. Nothing more is requisite. Downer is not entitled to ask any thing more. So far from this being a ground of complaint against Judge Hubbell, it shows an anxious desire on his part to meet out even handed justice to all the parties.

The next case is Specification 7, Hopkins against Stevens. That was a replevin case, where Mr. Watkins was attorney for the plaintiff. It is said in that charge, that the "Judge did partially and unfairly attempt to prevent the counsel for the said plaintiff, from adhering to an admission of fact made by such counsel." Now, Mr. Orton and Judge Chandler, the witnesses upon this subject, testify to this trial being had. They differ, however, about the language that Judge Hubbell used upon that occasion. The trial was had. The action was brought to recover certain goods that had been lying in a store house. Upon the trial, at some stage of the proceedings, Mr. Watkins admitted that the bill charged

by the defendant Stevens, as ware house man, was just and proper according to the usual course of business. That was what the defendant wished to establish. He considered that to be material; but Mr. Watkins considered that it made no difference, because in the mean time, and prior to the time the action was commenced, there had been a tender in American coin, and the party had accepted that tender. When they were discussing this question, either as brought up by Chandler or Orton. Mr. Watkins made this admission, although he may have made it indistinctly. Now, Mr. Orton says, that the Judge said he would not permit Watkins to make such admission. Chandler says he made some remark of that kind, but it occurred, according to his recollection, while he was charging the jury.

At all events he recollects rising himself and calling the attention of the Judge to the admission made by Mr. Watkins. The Judge said he had not understood that Mr. Watkins had made such an admission. Chandler then appealed to Watkins, and Mr. Watkins insisted that he had made the admission. And he tells us that the Judge then replied, "if you have made that admission you will be beaten." Chandler and Orton says he would not let him make the admission. Mr. Watkins says he did not consider the remark dictatorial at all, nor as saying that he should not make the admission, and he continued to make it, and to insist that the defendant, having taken the money tendered, it satisfied the bill; because if the amount was not sufficient, the defendant should have refused to receive any portion of it; and it was upon that ground that he did finally recover the goods. Now, no one of the counsel engaged in that cause, remembers the instructions of the Court to the jury upon that point. Either Judge Chandler or Mr. Orton were interrogated by a member of the Court—I think Judge Dunn propounded the question to this effect—whether Judge Hubbell refused to let that admission go to the jury? and the answer was, that he did not direct them to disregard it, and they did consider it in connection with the balance of the testimony. Therefore the Judge did not officiously interfere. He undoubtedly did remark, if you make that admission you will be beaten, or it is an end of your case, or something of that kind; whereupon Mr. Watkins explained that matter to the jury. It does not appear that the Judge charged the jury upon that point, after the exceptions were taken. There was a little sparring about it, at the bar. And what the actual remark of the Judge was, has not been settled. At all events it does not appear that he interfered so as to coerce the counsel to abandon the admission. The Judge then made no remark, that any judge might not have made with entire propriety, if he supposed that the right to recover depended upon the question, whether the bill was reasonable, and that the admission of the counsel at that time, would defeat the action. It is what occurs very frequently in Court. It did not perhaps occur to the Judge that the question of tender was before the jury.

The next Specification charges, that the Judge arbitrarily and partially refused the counsel in the case of Hungerford and Cushing, adequate time for argument of said cause. Now, it occurs to me, that upon Mr Hyatt Smith's own statement, there is just nothing at in all this charge. When we come to cross examine him, and refresh his recollection, some things he recollects, and some things he does not bring to his recollection; but after a day or two, he comes upon the stand again, and then he recollects, for the first time (although we had questioned him upon the very things before) some very important matters which

had transpired in relation to that case. Some things he does not remember at all. The truth is Mr. Smith has been engaged so much in other causes, and in other business, that he has very little recollection of the facts that did transpire in that case, or, I am afraid, in any other. At any rate, he shows a great want of recollection in this particular case; as, for instance, he says that the exceptions to Cushing's second answer, were argued here. Now, the truth is, they were not argued at all. They were submitted without being argued. He does not recollect of going to the room over the stage office, in the United State's Hotel, to call the particular attention of the Judge, to the particular parts of the answer to, or, on account of which, an exception had been taken, although Mr. Knapp says that we spent the whole evening in that way. He has not the most distant recollection of that at all.—He says the exceptions were argued. Mr. Knapp says positively they were not argued, and I know positively they were not argued. He says I was not present. I know that Mr. Knapp and myself did submit the exceptions without argument, and so Mr. Knapp swears. Now as to the exception to the first answer he is equally mistaken, and Mr. Knapp contradicts him in relation to that.—He says they were only argued a short time—and that the argument did not proceed far then, as he acknowledged the exceptions well taken. Mr. Knapp testifies that we spent some two days in reading the papers over and got nearly through them, and that so far as the merits of the case and the exceptions were concerned they were fully and thoroughly discussed; yet Mr. Smith had got it into his head that they were discussed very little. His recollection is, too, that the bar generally were present, when Mr. Knapp testifies that nobody was present but Mr. Paris and himself, and perhaps Col. Botkin. It was a special hearing, and nobody else was present; yet Smith is of the opinion that the bar generally were present. Now you see he is entirely mistaken in relation to facts, or else Mr. Knapp is. Mr. Knapp is the most likely to be correct I think, because he has not been engaged in so many transactions of an important and entirely different character as Mr. Smith has. It is but reasonable to make this supposition, because it is rendered probable by the fact that he subsequently comes upon the stand, and acknowledges that he was mistaken as to some matters.—He acknowledges that the remark of the Judge as to Cushing's ability to answer the bill was entirely different when he came upon the stand the second time, from what he stated it was when he came upon the stand the first time. In the first place he says, the Judge remarked "Cushing has not answered the bill, and he cannot answer it;" and when he comes upon the stand the second time he says the remark was, "I do not believe Cushing can answer the bill—I believe it is a fraud from beginning to end."—He first testified that that remark was made at the time of the argument on the exceptions, to the several answers, and then he comes and says, it was at the time the first answer was disposed of. Now these are very different statements from what he had made only two days before.

How then can we place any confidence in his testimony. He is engaged in other pursuits. His mind has not been upon this subject. It is like recalling a dream when he comes upon the stand. Mr. Knapp has been engaged otherwise. He has attended to nothing but the legitimate business of his profession. Smith says it occurred in this way. The Judge asked: "Mr. Smith do you contend that that is an answer to this part of the bill?" Says he—"I do." And then it was that Judge Hubbell made the remark. How differently he and Mr. Knapp

recollect the same remark, and the attendant circumstances. Mr. Knapp does not recollect any such remark, but he does recollect that Judge Hubbell said—"If General Cushing could not answer the bill it was quite immaterial whether his understrappers could or not." Smith recollects that assertion. This remark was of course made upon the hypothesis that this being a trust instrument, and the other defendants claiming under Cushing, could not complain, they being chargeable with notice. Well, he testifies himself, that he did request me to stipulate to submit that cause without argument, and such is the fact. He testifies the second time that he was anxious to go to New York and Knapp too testifies that that was the case—that he said he wanted to go to New York, and that he had got ready to go—that he was telegraphed to, to come up here and attend to the case. He testifies that I told him when he was first here that I should press that cause to a hearing, and that he had better stay. But he concluded when he got to Janesville, from statements made to him by Green, or Mr. Rantoul, that the cause would not be heard.

After being telegraphed to come and argue the cause, he says that for that purpose he came up with Mr. Jordan; and he admits that the only conversation he had with Judge Hubbell, was in the "United States"—of course not in Court, but a conversation he had casually in the Hotel, and that the Judge told him he would not hear him more than an hour, and would not listen any longer—that *it arbitrary conduct and conversation outside of the Court.* Anything a Judge might say outside a Court might be arbitrary. Would not saying to a man "you *must whip* me, or I *will whip* you," be an arbitrary exercise of power by a Judge out of Court as clearly as the same man's saying that he will not do a thing. He must *do*, or *will not do*, something relative to a cause in Court. There must be an *act* in addition to a declaration, or else it is no "*arbitrary exercise of power.*" You cannot act arbitarily by mere words.

Then Smith says he did stipulate to submit that cause without argument. He admits further, that we did agree that however that cause was decided it would go to the Supreme Court. He recollects that distinctly. It was an act of his own. The Judge never in any manner interfered with him. But because he wanted to go to New York he requested of me to stipulate to submit that cause without argument, which I did.

This brings us to Article 8; and the first case is that of Mrs. Howe again; where the Judge is charged with inducing her to submit to debauchery. Well, now, I shall leave that. It will be the pleasant duty of the counsel of the Managers to explain to this Court, how the Judge used his office to accomplish debauchery.

The next Specification that is insisted on, is the one in relation to Mrs. Sarah Pope. Well, I am unable to discover that there is any evidence in that case, that amounts to anything. The only evidence is the admission to Mr. Randall as made by Judge Hubbell, in relation to that matter, which amounts to nothing at all. It does not show that he took any liberties with her, that were at all improper, or that he ever used his official station to induce her to submit to any improper act, much less to be debauched. It is a conversation that Randall undertakes to state as transpiring between him and Judge Hubbell. He thinks he has related it, and understands it as Judge Hubbell admitted it. Now, Judge Hubbell made a statement to him about the matter, at his request, and as he says, he did state to him that *that*, as related by Randall, was what Mrs. Pope

claimed was done. But he stated, that he did nothing that any priest might not do, and it amounts to nothing from beginning to end. I will not spend time upon it.

The ninth Article is the next charge, where it is alleged in the first Specification, that he ordered a new trial, without sufficient cause, in the case of Treutledge against the Milwaukee and Mississippi Railroad Company. That is a somewhat singular charge, that without sufficient cause, and without argument heard by him in Court, he should grant a new trial. Now, it appears that no reason was assigned by him, except that this verdict was not warranted by the evidence; but was not that sufficient cause? The law has settled that itis sufficient cause for granting a new trial, and if it was granted as set forth in the facts here disclosed, as it appears it was, so far as we can get at the evidence; unquestionably the Judge was right, as the jury undertook to allow $50, for $2,50 worth of strawberries. The prosecution say that the plaintiff proved by somebody, that they were worth $50; and the defence proved by the man who set them out, that they were worth only $2,50; and all through they proved things up to a tolerably high mark. They had elevated notions unquestionably, about the damages for that tremendous amount of strawberries. And on the other hand, they showed that the damages were not so very considerable. That is sufficient to show, that he was warranted by the evidence in granting a new trial, and that no improper influence was brought to bear, which swayed his mind. It showed that there was nothing calculated to operate upon his mind, except an earnest desire to do his duty in the premises. They do not even show, that he erred, much less that he sinned.

The next Specification is the same, Hungerford *vs.* Cushing case over again. Three times we have had that, and I will let it pass.

The next case is Barker against Pratt. I have already disposed of that matter. Both of these instances are nothing more than a revamping of the old shoe.

The next Specification charges the exaction of unreasonable bail. Here we have Cushing again in full view, and I propose to deal with him now for a few minutes upon this Specification. Mr. Mariner was the witness. He was in a tremendous sweat. He was intensely anxious. He got a telegraphic despatch from Madison (here) and he must have an order fixing the amount of bail immediately, if not sooner. He makes known his wants to Judge Hubbell.

The Judge did not comprehend at first what it was he did want. Mariner undertook to explain to Judge Hubbell, as well as he could, the meaning of it. He testified here, that he did not know very well himself, and not knowing, he did not entirely succeed in telling Judge Hubbell. However an order was appealed from as Mariner learned. What was that order? Why, that order it appears, was, that the complainant, Mr. Hungerford, should remain in possession of the property in dispute, until the farther order of the Court. Well, Judge Hubbell remarked to him, that he did not know what would be the effect of that appeal upon the order he had made; and Mr. Mariner himself did not pretend to know. He never thought about the effect that *that* order would have in any way nor manner. At all events Judge Hubbell did not know what effect it might have, and he sat down and fixed the sum at $10,000. Well, what is it? an appeal from the order, allowing Hungerford to remain in possession five or six months, and perhaps we would not get the evidence up in that time. That property would earn $10,000 in six months; and that is the arbitrary ex-

tence of proof. They are bound to show the aggravated circumstances, beyond a reasonable doubt, establishing the fact that the circumstances were such under that appeal, that the sum of $[illegible] was not a proper sum, and that it was so entirely beyond the proper amount as to carry conviction to the mind of a reasonable man that the Judge acted from improper and corrupt motives. I say they must establish that state of facts. Have they done so? Have they shown that was not a reasonable sum? It does not follow, because it was an interlocutory decree, that that should not be the amount. It did involve the question most important to Hungerford, and that was the possession of the property. That was the question at issue in the case, and Judge Hubbell made that order, sitting as Circuit Court of that county. The Supreme Court recommended to the Circuit Court, that it allowed Hungerford to remain in possession of that property, until good cause was shewn for a contrary determination. That was the great thing in litigation between the parties, and they have failed to establish any improper motive at all.

The remark that these defendants had commenced a suit in Judge Miller's Court, that he had been more friendly to Cushing than to Hungerford, and that they must either "fish or cut bait." I say the meaning of that was that they must either go and dispose of their business in Judge Miller's Court, or else dispose of it before him. He remarks in that connection more, that if they did not cease he should enjoin the proceedings in Judge Miller's Court, and show them what he meant by either fishing or cutting bait—that they must go either to one jurisdiction or the other. If any body had reason to complain of Judge Hubbell's action in the case it was Hungerford. We were always ready—Cushing never was—and yet we never could get Judge Hubbell to bring the case on. He never would hear us at all, unless the counsel of Cushing were present, and we waited from day to day for the purpose of getting the presence of the counsel of Cushing, to the end that justice might be done. I never believed in complaining about the conduct of the Judge, because I was satisfied at the time that Judge Hubbell's motives were pure, and that he intended to do justice, and although we had, technically speaking, a right to go on and be heard; it was better to wait a few days and let Mr. Cushing be heard by his counsel, than to go on without them.

The next case is that of McGrath against Cook. That was a motion to dissolve an injunction. Mr. Winfield Smith appears to have been counsel for McGrath, and Watkins for Cook. Now it appears that an injunction had been granted by the Court commissioner in this case; that Watkins, as counsel for Cook, had moved to dissolve the injunction, on the ground that the matter set up in the bill did not authorize the issuing of the writ; that that motion was taken up, and to some extent discussed.

But it was modified so as to permit the reception of certain ward or city orders.—Subsequently, as the cause went over, the bill was amended by leave of the Court—and at the request of Mr. Smith, the counsel for the complainant, who asked to amend his bill, and this was after the motion to dissolve was filed, and after the injunction was modified; and he obtained the consent of Mr. Watkins to the amendment. Watkins, reserving *all his* rights—stipulating that he is to waive no legal right by consenting that he might amend the bill. Well, subsequently, a motion was made for an attachment, or rule to show cause why Cook should not be attached, as for contempt in violating the injunc-

tion, or some order that he should be made to pay them, (the orders) into court; and on motion for the attachment against Cook, Mr. Watkins insisted upon his motion to dissolve; and the matter passed along from time to time for a day or two; and then it occurred in some manner in consultation, that Judge Hubbell required the orders paid into Court, or else that Mr. Watkins as solicitor, or an officer of the Court, should become responsible that they should be paid in.

Well, it was a very proper thing, that the Court should insist on personal responsibility, for if a bond was given that they should be forthcoming, and they should not come, then a suit would have to be brought. Watkins declined in the first instance, to assume that responsibility. He subsequently saw his client, drew a bond and presented it in Court. Then Mr. Smith objected. He thought there were false recitals in the bond and declined to take it. Watkins again saw his client, and got security in his hands, so that he came in Court and became personally responsible as an officer of the Court, for the forthcoming of the orders, Judge Hubbell all the time refusing to hear the motion to dissolve, until he had disposed of securing the payment of the orders into Court. Watkins was liable to be attached for contempt after having consented to the undertaking. It was much better, then, that security should be given in that way, than by way of bond, as upon that a suit might have to be instituted, and it might be years before a party could get redress. The motion to dissolve was one that he could dispose of in a very few minutes. If anybody had a right to complain, most unquestionably it was the defendant; but there is no complaint at all from him. But the trouble is, that the injunction was dissolved afterwards, and, it is said, when the cause was in the "same condition" as before. The proof, however, refutes that from beginning to end. Finally, when Watkins had assumed this responsibility, then Judge Hubbell did hear the matter. He said that the next day the motion to dissolve would be taken up. Smith did appear, and it is quite immaterial whether any notice was served, or not. It is apparent that Smith did appear on behalf of the complainant, and discussed this matter with Mr. Watkins, who insisted upon his original grounds for dissolution, in addition to the fact, that the complainant had amended his bill.

He insisted not that he did not file a proper amendment to the bill, but that as a matter of law he could not amend it, and still retain the injunction, and then the Judge made the order to dissolve, and the injunction was dissolved relieving Watkins from the responsibility he had assumed. Was there any impropriety in that? None whatever. Smith is the only man who has any feelings on the subject. I think he exhibited a little prejudice upon the stand. I am not much acquainted with the man, and I may be mistaken, but I think he is the only man who has shown any disposition to find fault in this affair.

I proceed now to article 10; and here we find the Trentledge case again. That I have treated of sufficiently.

Then we have the Groves case revamped. The testimony about this affair is all before the Court; and I have made all the remarks I wish to make on that case concerning this matter.

The next case insisted upon is the 8th specification, the case of Mrs. Howe. That is the advisory matter. The testimony upon that subject is all before the Court, and I have commented sufficiently upon it. So far as the indictment is concerned, she testified positively, that she did not know there was an indictment against her husband at the time of that interview, and she did nothing to Judge Hubbell for that reason.

Block, specification 9, "in divers meetings." Work at Bintown." I cannot recollect any case except the case of Jones, where Bantom was administrator; and therefore Bantom may be easier understood to get the Judge, nor in any case in which he was interested himself; though in other cases he has offered, and tried to get his opinion, or to get something from him, from which he could infer or ascertain what his inclinations were. That charge, however, was not communicated to Judge Hubbell. The Judge never was aware of his intentions, and he never succeeded in getting anything from him.

Specification 12. "In the divorce suit of Mrs. Sarah Pope." I do not remember any testimony that has any tendency to sustain the charge that he was "improperly approached, counselled or advised with" by this woman. Mr. Randall's testimony neither establishes this specification, nor the other in relation to Isher; nor have we in our duty to establish them.

As regards the next specification, the case of Doutman, it is only necessary to state that the testimony amounted to just nothing.

The next case is that of the State against Jabial Smith. It is charged that the Respondent was improperly influenced by Peter G. Jones and others. I do not now remember what that case was. The indictment, I think, was for adultery. It was clearly proved that there was nothing of that case. The prosecuting attorney himself concluded that the proof was not sufficient to warrant a conviction.

At all events the jury came back in a very short time, and rendered a verdict of not guilty. Now I am unable to discover from the testimony any improper conduct on the part of Judge Hubbell, in that matter. The extent of his advice and intervention, the testimony was, that he suggested the propriety of entering a *nolle prosequi*. That was the extent of his intermeddling in the matter—a very common thing for a Court to do, an every day's practice; and there can be no earthly doubt, that the Judge's conduct upon that occasion was entirely proper.

The next case is that of Craft against Craft, improperly advised with by Andrew E. Elmore. That subject you have already had before you, and I have made all the remarks I wish to about it.

Then comes the case of Turner, prosecuted for seduction. It appears in this case that Judge Hubbell was requested to go down to the jail and have a conversation with the accused, and that he went and had a considerably lengthy interview. Turner told his story, and the Judge told him or suggested the propriety of settling his case away, and having it tried somewhere else. Turner said no; he wanted the case tried before him; and Judge Hubbell replied that if he was tried before him, he would endeavor to give him a fair trial, although he believed he was guilty. That is the substance of that charge. I believe Turner became sick afterwards, and was in danger of dying. The Judge then made some order, or orders, lessening the amount of bail to the end that he might be relieved from imprisonment. I cannot see any impropriety in that either. If there is, I am unable to discover it.

The next is the case of Haney again, in which the Judge is charged with being improperly approached, and influenced by George P. Thompson. It is unnecessary to take up any time about that. Thompson has been upon the stand, and has stated the conversation which did transpire, and it amounted to nothing. It only differed that Thompson had requested of Judge Hubbell that

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How, specification 11, he is charged with having "Word A. Ranton." I do not recollect any case except the case of Jones, where Ranton was administrator; and there Ranton was the mover understood to get the Judge, nor in any case in which he was interested himself; though in other cases he had desired, and tried to get this prisoner to get something from him, from which he could infer a expectation to his satisfaction what this opinion was. That desire, however, was not communicated to the Judge. The Judge never was aware of his intentions, and he never succeeded in getting anything from him.

Specification 12. "In the divorce suit of Mary Sarah Pope." I do not remember any testimony that has any tendency to sustain the charge that he was "improperly approached, consulted or advised with" by this woman. Mr. Randall's testimony neither establishes this specification, nor the other in relation to other matters in the case, to establish them.

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solution, and look at the men that have followed the respondent; take nothing but the evidence in this case, of the character of these men, who have followed him from before his first election, to the present time, and it is to be wondered out that he is as pure as he is, living among, and doing business for such a set of men—and see too how he has withstood them all—and I think it will be a long time before the second judicial circuit will get a man to fill his place, in point of capacity and integrity; and a long time to find a man who can stand up beside the corruption which has surrounded him, as he has done; and any man who can withstand what Judge Hubbell has done, is entitled to the highest confidence. I say now, and say it because I know it, and speak understandingly, that those who have read the evidence in this case are anxious to hear the judgement of this Court; and I know they expect an unanimous verdict, that the respondent is not guilty. I know that every sensible man must conclude, when he looks upon the testimony in an unprejudiced manner—without sinister motives in view—that the prosecution have signally failed to establish anything against the character of the respondent; and the world generally, where the evidence in this proceeding has gone, must inevitably come to the conclusion, that the prosecution have utterly failed to make good any single one of these charges. The people of this State are waiting with more anxiety for the result of this trial, than for the result of any public proceedings, that ever transpired in this State. They look upon this tribunal with confidence; and, having that confidence, as I have, in this Court, that every member will endeavor to dispose of this case, in the manner which he conceives to be right and just. That is all that I expect—and all that anybody ought to expect—but that is what we confidently hope. We have no fears for the result. I say now, if Judge Hubbell shall be convicted by this Court, and cast an outcast into the world, it will be impossible to satisfy the people of this State, that he has been honestly and rightfully convicted upon these charges. You cannot establish in the minds of the people of this State that he has been actuated by any corrupt motive; but they will continue to believe that he acted as he conceived to be right, and that his motives have been most pure, from the beginning to the end of his judicial career.

I have now only to thank the Court for the attentive manner with which they have heard me. That I have been tedious, and that I have not been in any manner amusing I admit; but I hope the facts I have submitted and the reasoning upon the facts may not go for nothing. If I have trespassed upon the time of the Court, I beg pardon; but the questions arising here, have been important, and I think I may be excused for the length of my remarks upon them.

I shall now leave the case with the Court, with the most entire confidence that the longer its termination is delayed, we will only be delaying the triumphant acquittal of the Respondent.

Mr. President, and gentlemen of the Court, I have done

AFTERNOON SESSION.

Mr. KNOWLTON. There seems to be some misunderstanding in regard to the manner in which the argument is to be proceeded with. It will be recollected that we offered to submit this case without any argument, and the Managers

could not state whether they would be willing to do so or not; and something was said in relation to a conference about that matter. Mr. Sanders, I think, could not undertake to decide without submitting the proposition first to the Assembly, during the recess of the Court, after the Managers had consulted, I heard from them that they had concluded that the case must be argued, and they requested my attendance at their room. They there said that to save time, they would waive an opening of the case. I told them that I could not insist upon it, although it would be a prejudice to us, not to have the case opened by them. They said that that was the conclusion, not to open the case at all, and that we might go on and present our arguments. I had heard by some means that it was doubtful who was to close the argument on their part. I put the direct question, and they said they did not know whether Mr. Ryan would speak any more or not. They said, however, that, if Mr. Ryan spoke in the closing argument, nobody would speak but Mr. Ryan; but if he did not speak, the Committee would speak and relieve each other.

Mr. Sanders. I confess I am somewhat surprised at the statement made by the counsel for the respondent,—that he did not understand that arrangement. I believe there is no difference among the Managers as to that arrangement. I do not know how the consultation was brought about; that is not material to the question; but we had a consultation, and as has been stated, an opening of the summing up was waived. The respondent, by himself and counsel, were then to submit their argument or arguments; and the case was to be closed on the part of the Assembly. The question was asked, as Mr. Knowlton states, how many would speak upon the closing arguments.—I think it was said, during the consultation, that very likely, incase Mr. Ryan spoke, no one else would speak, but at all events there would not more than two speak. So the stipulation was entered into. I believe I proposed to the gentleman at the time, to put it into writing; but he said our understanding was definite and certain, as between us, and there was no necessity for a stipulation in writing. I came into Court on behalf of the Managers, and by the consent of the gentleman himself, I made the announcement of the agreement. I believe the respondent and counsel were both present at the time I made it, and they could not have misunderstood me; and to be sure that I made no mistake about the announcement, I called upon Mr. Leland for his report of my remarks, and here it is. (Mr. Sanders read the report.) That is a correct report of what I said in Court at the time. The gentleman said our waiver of an opening would be prejudicial to the respondent, because he would have no information as to the points we relied upon; and the question I believe was put to me, whether we relied upon the law, as laid down by Mr. Ryan, in his opening of the prosecution, and I replied that we relied upon the law as he stated it then; and that we believed that to be the law of the land; and that we did not dissent from the counsel as to what was impeachable; and he said, that answered their purposes, and they would now know what to do.

Judge Hubbard. As this, in some respects, is a question of veracity, I have to say that the arrangement was made without my knowledge or concurrence at that time. My counsel reported to me that the prosecution would but make but one speech, as they had the right to, make the last argument, of course, it was proper that we should proceed first. To that, as a matter of necessity, I gave my assent; not because I thought it right, not because I

thought it unfair; not because I thought it fair; but because I understood that that arrangement had been made. To that arrangement I have given my consent; but to nothing farther, nor ever shall I.

Mr. Arnold. As for myself, I had no part whatever in making that arrangement, and, therefore, cannot know personally what it was. There seems to be a disagreement between the Managers and my associate, as to what the arrangement was. It all shows the importance of having done here what the rules of our courts require, that all stipulations be reduced to writing, or else they cannot be noticed. I cannot assume to decide what the arrangement was, yet it is very material, in my judgment. I confess that the weight of evidence and authority seems to be on their side, that they did reserve the right to submit the argument, or arguments," which, of course, would include more than one, if they saw fit to make more than one. I have heretofore opened the case on the part of the respondent at very considerable length; and I desired to make my closing argument as brief as possible, and make it pertinent to the case; and I trusted that I should be enabled to do so, by learning, from one of the arguments of the gentlemen opposed, the points upon which they intend to rely. Any one accustomed to the practice of law, and especially to addressing courts or juries, knows that a closing argument can be made more effectual, when the speaker is advised as to what is relied upon by the other side. It is particularly so here, where there is such a mass of evidence in regard to the charges. I do not know what ones are deemed important, nor what unimportant; in other words, I have not before me the positions taken on the other side, that I might address myself directly to them. I think it would be a thing unheard of that, in a case of this magnitude, the respondent should be compelled to submit his whole defence, on the summing up in the dark, as to the main points upon which the prosecution relies, after the testimony is all in. I do not feel disposed, if I can avoid it, to pursue that course in this case. It is generally considered the right and the privilege of the respondent, to have made known to him distinctly by the prosecution, after the proofs are all in, what it is which they call upon the accused to answer, and what it is in this case, which the respondent has to meet and plead against. That is what I wish to know now. I do not like to be obliged to stand here to make what must necessarily be a rambling, discursive speech, about I know not distinctly what; neither do I feel able to do so. I have not the ability, in point of health, to occupy much of your time, and I desire to make the most of it. I should be glad, then, to have the benefit of the points which the prosecution mean to urge. If, however, the arrangement has been made, and the Court is satisfied, and we are compelled by the Court to go on, we shall have to do so; at the same time, we cannot think it fair or just.

Mr. Ryan. Like the counsel who has just taken his seat, I was not a party to the arrangement under discussion, and knew nothing of it personally. I can only say that it was immediately reported to me, by more than one of the Managers, as it has been stated by Mr. Sanders and confirmed by the report of Mr. Leland, which has been read. In regard to any hardship that might arise from that agreement out, this is not the time to urge it. That should have been done at the time that agreement was made. In the next place this is no hardship at all. I think the order agreed upon, is the best that can be made for

the summing up of a trial of facts, and the one which prevails the most extensively in the practice of Courts. It is the English mode, and it is the New York mode.

Judge Humbell. It is not the New York mode.

Mr. Ryan. I beg your pardon. I believe it is. The complainant in the Courts there opens his case and introduces his proofs. The defendant then opens his case, and speaks upon the complainant's case if he chooses; and when he has closed his testimony, if the case is argued, he sums up, and the plaintiff follows and closes the case. That was the order in my day, and I have been told by those who have practised there recently that it is so still; and the English books tell us it is the practice in England. It would be paying a very poor compliment to any counsel, and one that would be most improperly paid too, to say that he was one whit in the dark as to our views in this case. So far as his evidence and opening argument enlighten us, we profess no ignorance of his positions, and are not in the dark in regard to his views. After we opened the case, we introduced our proofs. Then they opened their defence and introduced their proofs. Our proofs applied specifically to our pleading upon them, and the bearing upon them is obvious. It would be much more propper for us to say that we were in the dark, than that they could say so. The Court will recollect very well that, whatever arrangement was made, was made on Saturday afternoon last, and we have been counting upon that order, supposing that both gentlemen would speak, and that Mr. Arnold would immediately follow his associate; and my friend Sanders, who proposes to make the first argument on our side, has been awaiting the conclusion of Mr. Knowlton's argument to arrange his own views in a shape to give to the Court; and having been under that impression, from that understanding, which has not been disturbed nor objected to, from Saturday afternoon until this forenoon, I think, if the agreement was made, they ought to abide by it, and they will suffer no hardship. I can say it is a matter in which I had very little desire to choose, whether to sum up together or alternately, and we to have the closing argument; on the whole, I too, should have preferred the alternate argument.

Mr. Arnold. I am aware that all this is out of order, and I will say only one word more upon the subject. If this arrangement is not deemed advantageous for some reason to the prosecution, I do not see why they so strongly insist upon it. I disapproved of it when I heard it; and, as I heard it, I understood the case to be closed by Mr. Ryan alone. Even that met my disapprobation. It cannot be pretended by the learned Managers who has addressed the Court, that he is unprepared to proceed with the argument. He has been familiar with it from its inception. He has heard the testimony in the committee, and he has heard it here; and he has heard his associate's opening. I think, therefore, it is not for him to say that he is unprepared in regard to the mode of proceeding. Every precedent that I can find, not only in the practice of Courts of law, but especially in Courts of impeachment, sanctions the course I desire to have pursued here. It was so in the impeachment of Judge Chase, and it was so in the case of Judge Peck. There were several arguments on behalf of the prosecution by the different managers; and, then, the closing argument of the defence to be followed by the closing argument for the prosecution. I cannot deny, too, that I have another object in view. I feel greatly crippled in having to pursue this course, which is, in my estimation of this case, a very

serious one. I believe that in the judgment of the people of this State at this moment, the prosecution are on trial here more than the respondent; and I wish, before I make my closing argument, to have them present here, as strongly as they are able, to their argument upon the charges that I may meet it and answer it argumentatively, and meet it more especially to vindicate the conduct of the respondent in the public judgment.

Senator Bayard. I wish to offer the following:

Resolved, That Mr. Sanders shall now open the argument on the part of the prosecution, Mr. Arnold shall follow on the part of the defence; and Mr. Ryan shall close.

Senator Allen. I would suggest an amendment—that the *counsel* on the part of the prosecution proceed now.

Senator Dunn. I move another amendment—that the counsel on the part of the prosecution *proceed* with the further prosecution, because the case has already been opened.

Mr. Sanders. I have always been in the habit, sir, in my limited professional experience, of adhering to all my stipulations, whether they be made verbally or in writing; and I am somewhat astonished, as I said before, that this question should be sprung upon us at this late hour in the progress of this case. As has been remarked by my associate, this arrangement was entered into during the recess of last Saturday. The time between that hour and the present, has been wasted, as far as the prosecution is concerned, in the expectation that the defence was to go on in the order we had agreed upon.

The counsel for the respondent says the way he looks upon this trial, it is a trial of the prosecutors and not of the respondent. Whether he means the Assembly, the Assembly's Managers, the Assembly's counsel, or some of the witnesses, I know not. If it is the Assembly or their Managers, they are ready, sir, to meet the issue, so far as that is concerned, and leave it to the world and to the public, who it is that is upon trial in this cause and court at this time.

The respondent himself, has said that he was not present at the consultation, and did not assent to the agreement. But the respondent was in Court when I made the announcement, and that arrangement has been adhered to up to this morning. The gentleman, who makes this complaint was here yesterday, and in Court. He must have known of this arrangement. He expressed no disapprobation of it in Court, and it is not according to my understanding of the rules which should govern counsel and control all causes, that it is proper for him to come in at this time and break in upon that arrangement, by saying that the stipulation was not, and should have been, in writing.

One other remark—the respondent says "this is a question of veracity." It may be so; it may be a question of veracity; but certainly, so far as the Managers are concerned, the evidence of the truth of the position assumed by them, as furnished by all who heard the statement made in this Court, is on their side. There has been no misunderstanding among the Managers; nor, so far as I have heard, with the Court; and if it is a question of veracity, sir, as between the Managers, and counsel of the respondent, or between the counsel and myself, with the evidence upon the subject before the Court, we do not want our veracity impeached by the passage of this resolution.

Senator Dunn. The last remark of the Hon. Manager, requires some explanation from me why I sustained the resolution.—The parties in this case

have undertaken to make an arrangement about the order of their argument. It appears that they disagree. I do not undertake to say that the Managers, nor that the counsel for the respondent, have made misstatements in relation to the arrangement; but that they *misunderstood* each other. It now becomes necessary for the Court to adopt some rule upon the subject; and they will adopt the rule that is proper, under all the circumstances, without intending to attack the character of gentlemen on either side.

Senator BLAIR. I offer the following, in place of the previous resolution:

Resolved, That but one argument will be heard on the part of the prosecution, after the counsel for the defence has closed.

Lost—noes 16; ayes 8.

The question now recurred upon the original resolution.

Lost—noes 13; ayes 11.

Senator DUNN. I would ask the members of the Court to devise some plan, as it devolves upon them now, for carrying on these proceedings.

Senator STEWART. As I am among the number who voted with the majority, I wish to state the reasons why I voted as I did. I voted in accordance with what I considered the rules of proceeding in such matters, that the prosecution are to open this case, that the defence then follow; and it then becomes a matter for the Court to determine how many counsel they will listen to. As I understand from all the proceedings I ever knew of in any Court, that is the general rule. As there seems to be a misunderstanding among the counsel in regard to this matter, there is one thing certain—on the part of the prosecution, they did waive an opening. Now, this Court has nothing to do, but to listen to the arguments of the respondent until they are closed. When they signify that they have no further argument to submit, then the counsel for the prosecution will proceed; and it is a matter for the Court to decide how many counsel they will listen to.

Senator BLAIR. I believe I am never at a loss to give reasons for my votes, and can do so now if necessary.

Senator DUNN. I ask the majority who have just rejected this resolution, to devise some plan of proceeding. It is very clear that the progress of this trial is suspended. We are awaiting the order of the court that the cause may progress. I asked no reasons of members for their votes.

Senator BLAIR. I rose some time since, Mr. President, and have not yet taken my seat, though, at least, one senator has spoken since. If I can have the floor I will proceed.

The PRESIDENT. Has the Senator a proposition?

Senator BLAIR. I have a suggestion—and that is, that the Managers and counsel for the respondent carry out the agreement as understood by the Managers, without regard to any course being pointed out by the Court. That is the usual way to proceed, whether any agreement has been made about it or not.

Senator HUNTER. I wish to offer the following:

Resolved, That the respondent's counsel do now proceed with the argument for the defence.

Senator STEWART. I am opposed to that resolution. I think if the counsel for the respondent have closed their argument, then the remainder of the argument of this cause falls to the Managers.

Senator Blair. It is not for us to say who shall close, nor who commence. It is for the Managers to manage their own business in this argument. If the defence is through, then the Managers can proceed; if not, then the counsel for the respondent can proceed without a resolution of this kind.—It is unjust to *compel* either side to proceed.

Senator Hunter. I will alter my resolution by striking out the word "*now*."

Senator Lewis. I hope the resolution will not be adopted. It seems to me no action of the Court is needed in this matter. We have but one duty to perform in this trial, and that is to decide the cause, and I for one am in favor of performing that duty after the arguments are finished.

Mr. Ryan. If it is not entirely out of order, I should like to suggest they have already announced that they wish farther to argue their side of the case. The question, then, before the Court really is—which side shall proceed first. I think *that* is a question for the Court to decide.

Senator Smith. I wish to offer the following as a substitute for the resolution now before the Court:

Resolved, That this Court do now proceed to determine this cause without farther argument.

Mr. Arnold. Unless it is not in order, I would say that we, on the part of the respondent, would most heartily concur in that resolution.

Lost—noes 23; ayes one (Mr. Smith.)

The President. The question now recurs upon upon the original resolution of Mr. Hunter: Resolved, That the respondent's counsel proceed with the argument for the defence.

Adopted—ayes 16; noes 8.

Mr. Arnold. Mr. President, the senator from the 5th, Mr. Hunter, modified his resolution at my instance, by striking out the word "*now*;" because I foresaw that if it should pass, I shall be under the necessity of applying to the Court, as I now do, for delay until to-morrow morning. That favor is not asked for on account of want of preparation; for I have been ready at any time to proceed in this order if I must; but on account of my health, which is such at this moment that I am entirely unable to go on. I was up last night on account of an attack of chills and fever, and under the attendance of a physician twice during the night. I have no doubt of being able to go on in the morning; and, I hope, finish before the adjournment at noon.

TWENTY-SEVENTH DAY.

Thursday, July 7.

MORNING SESSION.

CLOSING ARGUMENT OF J. E. ARNOLD, ESQ.

Mr. President: The Respondent at the bar stands arraigned before the highest Constitutional tribunal in the State, on an Impeachment of the Honorable the Assembly, and in the name of the people of this State, for "corrupt conduct in office, and for crimes and misdemeanors." This is indeed an impressive scene, not only to the eyes of the present beholders, but through all time to

come in the history of our State. It is, too, a most unequal contest between the sovereign powers of the State, backed up by all the treasure of the government, by the ability of distinguished counsel, and by the personal malignity of its real prosecutors; and the single individual citizen who is put upon his defence. In such a conflict I regret that this day I am so illy prepared to take up arms for the weaker party; and could I consult my health or my inclination, I should retire from the field; but the Respondent feels that his character, his reputation, his good name and that of his posterity may, in the Providence of God, be to some extent committed to my charge. I therefore, take the post of duty, and I shall stand here manfully in his defence, if need be, until exhausted nature, or exhausted intellect shall give way; and if, like Richard, I shall sink to my knees or upon my back, I shall still, with the blessing of God, strike a last blow, feeble though it be, in his behalf.

So much for myself—now for my mighty subject! The object of the proceeding of impeachment is very obviously ascertained from the description of offenders which it is designed to reach. It is a political power reserved in the constitutions of States, although it is a criminal proceeding in its nature. It is reserved in behalf of the sovereignty, with a view to reach political offenders; and, in our country, public officers, who by the immunities of their office, or on account of their power and influence with the people, may be supposed to be beyond the reach of the ordinary tribunals of the government; and is designed also to protect the people from the aggressions and tyranny and corrupt conduct of those who may hold office.

I had occasion in the opening of the defence in this case, to comment at considerable length upon the mode of proceeding by impeachment, upon its scope, and upon the distinction existing in the power and mode of its application in England and in our own country. In England, it will be recollected, it is a proceeding to which *all* the subjects of the realm, whether Peer or Commoner, are subject. It is an ordinary mode of proceeding there for the punishment of offenders; and the punishment may be proportioned entirely to the aggravation of the offence of which the accused may be convicted. It may be death, it may be imprisonment, or it may be fine. In our country, and by the Constitution of the United States, a limitation has been put upon the exercise of this power, and upon the punishment to which the convicted shall be subjected. It is limited to the President, the Vice President, and the civil officers of the government; and the punishment in no case can transcend removal from office and disqualification to hold office. In our own State it is limited to the civil officers of the government; and the punishment may be removal from office, or removal together with disqualification to hold office.

There is one fact which may be borne in mind in regard to this power of impeachment. It has grown up, particularly in reference to the judiciary, from an idea of irresponsibility, under cover of the independence of the judiciary; and that idea is based upon the tenure of office. In England the judiciary is not dependant upon the crown; and, in our own land it is not dependant upon the President, the executive department of the government. The tenure here is during good behavior; and hence, under such a tenure, and with such independence, lest irresponsibility should creep into the judicial tenure; lest, on account of the immunities of their office, and their perfect independence, they should deem irresponsibility a sort of judicial franchise, this power of impeach-

ment has been deemed necessary.—But under the constitution and laws of this State, the judiciary has no such tenure.—Our judges are elective; and hence there is a responsibility, a direct responsibility to the people. I mark this distinction to make this assertion, to draw this inference—that, under an elective judiciary, where the Judges are responsible to the people at all times, and may be reached at frequent intervals, this proceeding ought not to be resorted to, unless it be in a most aggravated case; because by the opportunity of election, by means of the ballot-box, an incompetent, an obnoxious or a corrupt Judge may be speedily reached and deprived of his office by the people.—He is their trustee, clothed with a portion of their sovereignty for the time being; and, if he abuses that trust, he cannot only be removed from his office by the vote of the people, but in the very act of such removal subjected to censure and to punishment. And I assert still farther, that more especially should this proceeding be deprecated in a case like the present, where the officer attempted to be impeached has been so recently before the people, with a full knowledge, on the part of the people, of the great mass of these accusations; and when these matters have been most thoroughly canvassed in a most bitter political contest; and yet has been re-elected and endorsed by those whose trustee he is, by an overwhelming vote.

Is it not then surprising, at the first blush, that this proceeding should have been instituted, under the existing circumstances.—Who has called for it? Who of the people have called for it? Who of the people, after having triumphantly endorsed him, with these charges known to them, should have so soon ascertained that the respondent, their trustee, had been guilty of "corrupt conduct in office and of crimes and misdemeanors," and that he should be subjected to this solemn prosecution? What parties, what suitors in his court; who that he has had to deal with, in his official capacity, have appeared and become the responsible endorsers of this prosecution. Who of any of them have made complaints against him or been witnesses against him here or elsewhere? Who of them have complained that he has been guilty of judicial tyranny, oppression or corruption?—Not one, so far as my present recollection extends! And yet there must be a cause. There must have been parties who have originated, and who have prosecuted this proceeding. It leaves room to doubt, to greatly doubt, whether this prosecution has been instituted, really and truly for the cause of public justice, and to protect the purity of the administration of the law; and to open a suspicion, a reasonable and well founded suspicion, I believe, that it has proceeded from far different, and quite unjustifiable motives. It cannot be out of order then, to refer for a moment to the history of public events, and particularly to the history of the respondent at the bar, for the last few years.

The elective system of the judiciary was engrafted into our constitution; and under it and under a law of this State for that purpose, the first election took place in the fall of 1848. At that election, the respondent at the bar, was a candidate for the office of Judge of the second judicial circuit. At that time, and in that election, he became the subject not only of fair and candid opposition; but also the subject of persecution and hatred. A party was formed against him, embracing some of the leading politicians and lawyers, of that circuit of the State. It has followed him ever since; it has followed him in private life, and in public life. It has followed him in the streets, and it has followed him in the court house, and upon the bench.

But again, in 1851, in pursuance of the law, another election took place, and he was again a candidate in the field; not from choice, not from a desire to retain the office; but, because from the position in which he was placed, from the hostility and persecution of his enemies, from their threats and slanders which came continually to his ears, he deemed himself bound in honor and bound as a man, not a coward, and not afraid of the investigation of his conduct, to again place himself before the people and allow them for themselves to investigate his conduct as a judge; and either to condemn him by a rejection, or to endorse him, and confound his enemies, by a re-election. The result is known. The people for themselves passed upon *that* impeachment; and if there can be any such thing in the law, or in moral estimation, as a *condonation* for official offences against the people, it certainly is when the people themselves, with full knowledge, either forgive them or endorse, by a re-election to office, as they did in this instance, the party who is accused.

Another fact—for I must in this case speak plainly; not, I trust, intemperately; certainly not with all feeling; but I must speak plainly and truly that which I do believe.—It has appeared here in evidence, that the counsel for the Managers, distinguished not only for his ability, but for his political position and influence, was, in that election, the friend and supporter of the accused, aiding him not only by his vote, but by his pen through the public press, and by his voice and influence in the community. He had been for a long time a practitioner at the bar of the Court, where the respondent presided. He was acquainted with his judicial character and conduct; and yet he gave him his support. It is further in the testimony, that in some of the very questionable conduct, which is now set forth against the respondent in his position as a judge upon the bench, that gentleman was the advocate of the conduct which was pursued, and was himself of the opinion that the respondent could, of right, do the things which he was called upon to do; or, if not so, at least that he desired him to keep his seat upon the bench. Yet after a year—nay, less than a year—after a few months, you find that that same individual attempted, through the legislature, a general impeachment of the entire Supreme Court of the State of Wisconsin; and yet, it is well known, whether true or not, but by public rumor, that, from that general impeachment which involved an accusation against all the judges of the Supreme Court, he, in public conversation, and public rumor, was known to have excepted the respondent at the bar.

Up, then, to the session of the legislature, one year ago last winter, he has pursued an undeviating course of support and friendship towards the the respondent. But another year elapsed, and the scene changed. He becomes, then, an active participator, to say the least, in the proceedings against the respondent, out of which this impeachment has grown. The responsible party, I believe, if every body has not forgotten about it, was one William K. Wilson, a man who, I believe, it was said, never had a very extensive acquaintance with the respondent, and had never been a party or a suitor in his court. I say he was the responsible prosecutor; but I believe no man thinks, no man for a moment supposes, that William K. Wilson, the single, almost unknown individual, could have been so inspired in behalf of the cause of public justice, that he felt it to be his duty, irresistible duty, to go alone before the legislature of the State and attempt an impeachment of the Judge. No man, in his senses, can believe that it was the unaided work of his own hands, or that he was even the originator of

the scheme. There must have been others who stood behind the curtain, and who prompted the act which was done; and although I charge upon no man the responsibility, yet I have the right to assume, for myself at any rate, that those who are now the life and body and soul of this prosecution, may have been also its instigators. And how has that proceeding been conducted? In a manner unusual, and, as I think, unjust towards the respondent. The complaint was referred to a committee. That committee sat day after day, and week after week, with closed doors and in secret—the defendant not advised of their proceedings, not invited to be present, not offered that poor opportunity of defending himself before the committee of investigation. How different from the course pursued by the United States in the case of Judge Peck, where the respondent was advised of the proceedings contemplated against him, asked to be present, offered the opportunity of cross-examining the witnesses for himself—a course most obviously just; just to the public, who can have nothing to fear from it, and just to the accused, that he may be enabled to acquit himself at the start, and not be subjected to the expense, the harrassing annoyance and disgrace of a public prosecution as a criminal. How just to the State would it have been in this case, because I do verily believe, and I think this Court will endorse the assertion, that if that course had been adopted, if Judge Hubbell had the opportunity to have appeared there as he has here, to have explained to that committee, it being a disinterested one, all the matters brought against him, the State would have been saved the trouble and the enormous expense of this trial, and the respondent would have been saved the trouble and the expense, and the disgrace of this prosecution; for it is a disgrace, even if he is acquitted, by bruiting through the world the charges which have been preferred against him by the Assembly. That committee converted themselves into inquisitors, and they conducted their proceedings with the spirit of inquisitors. How different the course of the respondent! Although not invited to be present, although forbidden the opportunity to defend himself, ready and willing that his conduct should be investigated, he gave notice to the members of his bar throughout his circuit, and to the world, that he wished every man who knew aught, or could swear aught against him, to go before that committee and make a clean breast of it. In their conduct, the conduct I mean of the committee, they were, in some respects, if public rumor, and if some admissions which have crept out here from themselves, are true—not only inquisitors, but they were something worse. They ransacked not only the judicial character and conduct of the defendant, but also his private life. This is a matter of public rumor; and I infer its truth from the objections that have been made here to furnishing us a copy of the testimony taken before the committee. It has been asserted that they contained things which did not relate to the charges that were pending before the Court; and I have a right to infer, and I do infer it, that because it did contain a secret inquiry into what was none of their business legitimately, the private life and character of the accused, they were afraid, at any rate unwilling to submit that investigation, and the results of it, to the inspection of us and the world.

They seemed to have forgotten the line of their duty. They seemed to have forgotten that they were, or ought to be, disinterested agents of the State, and the Assembly, bound to inquire into the charges, affecting the judicial character of the accused. They seem to have forgotten also, what was due to

him as a Judge, and as a man. They seem to have overstepped the bounds of fair and legitimate inquiry. They seem to have forgotten the sentiment of honor which pervades the breast of every man, who is inquiring into the conduct of his fellow man, whether as a man or as a public officer.—And it is true that, in their own mad career in that committee room, they not only forgot the sentiments of honor that should govern men and public officers; they not only did not spare the defendant, but they did not spare either the living or the dead. The result has been brought forth, and it is here! (Holding up the pamphlet of charges.) This fœtid spawn of combined malice, falsehood and libel, has been brought into the bar of this Court for its favor or its condemnation! I hoped, I have believed, I believe still, that upon the evidence in this case, it is dead and buried. I had hoped that the Honorable Committee, and their counsel, would have so regarded it, and gracefully retired; but the effort is made to resurrect it, and I find by reference to their ear-marks, that they have informed us that they intend to rely seriously upon nearly every one of these charges and specifications, and will contend before this Court, that they have been made good by the proof.

Nor is this all, in the course of this prosecution. The opening argument of the learned counsel for the managers is full of instruction, not only upon the law, which in his opinion, governs proceedings of this kind, but also upon the motives of the prosecution and upon the spirit in which it was carried on. It has been claimed that these charges were of a more serious character than all the charges that were ever before hurled against any man in the proceeding of impeachment. It has been claimed that the respondent has come in here as if with a sense of guilt, and has interposed the felon's plea, not so much denying his guilt as denying the proof by which it was to be established. I have alluded to that already. I have shown that it was the legal plea, the proper plea, in a case like this, where the charges were so numerous, and extended over his conduct for so many years, and where, in order to answer it in detail, it would be necessary to have a perfect memory, and a complete record of his whole Circuit before him. It is dangerous for any man, after the lapse of years, to attempt such a thing. Would the counsel have so done? Would he have undertaken to write out here in immense volumes the minute history of every one of the proceedings embraced within these charges and specifications? Yes, and then if in the history of his life so furnished by himself, they could have detected a mistake or an inaccuracy from a want of memory, the charge would have been hurled against him, that he had told a falsehood, with a hope to cover up the facts in regard to his guilt. Infinitely more proper thought he, and so thought his counsel, that he should interpose a plea which should throw upon the prosecution, the burden of establishing the charges they have made against him.

But not only this—in the course of the gentleman's remarks, he had occasion to say that if the respondent should go forth acquitted, "God help the second judical circuit;" and in the following sentence—"If there is no help for the second judicial circuit at the hands of this Court, then there is no help for it in the providence of God." What does the gentleman mean? Does he intend a contradiction? Does he mean in the first paragraph of the sentence, to appeal to God to help the second circuit, by taking away the life of the respondent. Does he mean to say in the next sentence that the Court must interfere, and

remove him; for, if they do not, God will not do anything for the second judicial circuit, will not take his life? I care not what it indicates in that respect, but it does show the feeling of hatred, for it can be nothing else which actuates the counsel, and under the instigation of which he pursues this prosecution. Why, sir, had I lived in the time when Sir Walter Raleigh was upon his trial, under the malignant prosecution of Coke, the most I could have expected to have heard from his lips would have been—"Spider of Hell!" Two hundred years and more have passed away, and I appeal to the counsel, I appeal to every man here now, whether he would rather be the heartless and persecuting Coke, or that accomplished gentleman, finished scholar and gallant soldier, Sir Walter Raleigh? But I am surprised in this age of the world, and within the walls of this Capitol, that such accusations and such appeals should go up to the Almighty.

But the answer to all this, I apprehend may be that these Managers and their counsel are not the responsible parties, that the responsibility is in the other end of the Capitol, that this proceeding has been instituted in the name and by the authority of the Honorable the Assembly; and I greatly fear that an appeal may be made to this Court to sustain this impeachment, for the reason that it has been undertaken and is prosecuted by so respectable a body as the Assembly of the State; that you may be told that it is well endorsed, that it is believed by them to be well founded, that they are enlisted in its support, and that their influence is cast in favor of conviction. Let us examine this. It is true that this prosecution is instituted by the assembly and in their name; but what is the legal position which they occupy? They are but the Grand Inquest of the State. They occupy the same position in this proceeding as a grand jury does in an ordinary criminal proceeding by indictment in our Courts. Who ever heard it urged upon a jury that the defendant must be convicted because the very respectable men who composed the grand jury and who had presented that indictment thought it ought to be sustained? Who ever heard of a grand jury being lugged into Court before a traverse jury to affect the right of the case? The Assembly has pursued the course pointed out by the constitution of the State. They have entertained the complaint; they have appointed a Committee to receive evidence; and they have upon the report of that committee, founded these charges and stated them in the nature of an indictment upon a criminal prosecution, and sent them in here—for what?—Why, *for trial.* It is here that the Respondent is to be tried. It is here that the accusations of the Assembly are to be tried.—It is here that the defendant has the opportunity to vindicate himself. You stand as the Court, the impartial judge between the accusations of the Assembly on one side, and the defence of the Respondent on the other. The Assembly is disinterested, but the Assembly hears but one side. The Assembly acts in its machinery for the purpose of introducing the charges and specifications to the attention of this Senate, and asks that they may be investigated. There their functions have ceased. They have longer nothing more to do with this proceeding than the strangers in our streets—except by and by, to pass the appropriation bills for the purpose of paying the expenses; but at present, in the merits of this case, they have no more to do than the most utter stranger to this proceeding. Let not the learned counsel then undertake to give character and force and weight to this impeachment by using the name of the Assembly. They are no parties to the judg-

ment here to be rendered. They are foreign to the jurisdiction of this Court; and I apprehend they would be the last to permit their interest in any respect to interfere with the proceeding here. Do they want a victim? For what should they? They want simply, I apprehend, that the defendant should receive what he is entitled to—a fair trial upon the accusations which they have made against him. It is true in this case as in any other—the State has its prosecutors; and the Assembly are sent in here with their accusations with a view to prosecute them by the evidence which has been submitted to them.

In the remarks which I have made, I of course speak of the Assembly as such in its capacity, as a grand inquest in finding this impeachment. In ordinary criminal proceedings the Attorney General conducts the prosecution. In this proceeding, the Assembly by its Managers—theoretically by its Managers—conduct the prosecution; in this case, by their Managers, by their counsel.

Again, no part of the responsibility of this trial, or of the judgment of this Court rests upon the Assembly. It is all *here*. It is a criminal trial, as I had occasion to remark in the outset; and being a criminal trial, the rules of the criminal law prevail; and among the first and foremost, is that one so well understood—that every man is presumed to be innocent until he shall be proved to be guilty. Do the counsel wish to reverse this rule, and to have you say, and to have us think, that the Assembly have found the defendant guilty by sending in these accusations, and that the rule of law shall be reversed; and, on the strength of the Assembly's finding of these charges, and on the strength of their accusations, that he shall be presumed guilty until he shall be proved to be innocent. Not such is the law. He comes here, in the presumption of this Court, notwithstanding the action of the Assembly, that he is innocent; and, till he shall have been proven by his accusers guilty, he will be deemed to remain so. That then is the issue. Has it been proven by satisfactory evidence beyond a reasonable doubt, that the respondent is guilty of any or all of the charges alleged against him? I come here to defend the respondent against these charges and specifications. That is all he is called upon to do. He does not come here, nor do I come here to prove him a perfect man, nor a perfect judge, nor to ask any vote or any act to endorse his character, except such a one as a judgment for acquittal would carry with it.

In my opening remarks, I had occasion to dwell at considerable length upon the various incidents to a trial by impeachment, and to speak of the limitations upon that power; and, in the course of those remarks, had occasion to controvert, at some considerable length, the proposition of the counsel for the Managers—that it was for the Honorable the Assembly to decide what was impeachable matter under the language of the constitution of the State, and that their decision upon that matter was obligatory upon this Court; in fact, that the Court was merely a jury to try and ascertain the truth of the facts alleged. I undertook to show, and I think I did establish incontrovertibly the falsehood, the absurdity of that proposition, which would make this Court the mere instrument in the hands of the Assembly. I read from authority most extensively to show that although the common law was not a source of jurisdiction, yet it was to be resorted to in proceedings of this kind, to ascertain the limits, mode of proceeding, and entire conduct of such a proceeding.

I remark now farther, upon that point, that under the constitution, it is for the Senate to fix the judgmen', which is to be entered up in case of conviction

of the defendant; that is, removal from office, or removal and disqualification. The very nature of the judgment must of itself decide what is impeachable, as corrupt conduct in office, or crimes and misdemeanors. The very nature of the judgment to be rendered by this Court, must necessarily decide what is impeachable matter, as corrupt conduct in office; and is it to be contended that when a solemn duty rests upon the Senate to impose a judgment for corrupt conduct and for crimes and misdemeanors in office, that they are not to decide what constitutes corrupt conduct or crimes and misdemeanors? Strange anomaly indeed if this Senate and this Court are placed in that most ridiculous predicament of being limited to find certain facts, and enter up the solemn judgment of the constitution upon such fact, when upon their own judgment the conduct of the accused does not approach corrupt conduct, nor a crime or a misdemeanor. I need hardly mention instances in illustration; but suppose the Assembly should present to this Court a series of charges against the respondent, exhibiting some absurd complaints or accusing him of some petty foibles in private life, and demand his impeachment. Of course, then, according to the theory of the prosecution, this Court is bound to entertain the charges; and if they find the facts to be true, the respondent must stand impeached for corrupt conduct in office, or for crimes and misdemeanors; and the Court must enter up the judgment required by the contitution, of removal from office at the least, and, perhaps, the additional judgment of dis qualification to hold office.

The proposition is not to be maintained. I now proceed to enquire what must be made to appear to sustain this impeachment. I assert again, as I did briefly in my opening.

I. The acts charged must be wrongful, illegal, or unconstitutional.

II. Those acts must be clearly proven.

III. They must have been done with a bad or guilty motive, to make them corrupt conduct in office, or crimes and misdemeanors.

First, the acts alleged against the accused, must be wrongful acts, illegal acts, or unconstitutional acts. Those acts, then, must be fully proven, and must be shown by the proof, beyond a reasonable doubt to have been done with a corrupt motive, otherwise, there can be no corrupt conduct, no crime or misdemeanor. It is the motive, the guilty motive, which makes any act criminal.—The conduct charged against the Respondent is partly for illegal and partly for wrongful conduct. The charges, or articles I. II. III. IV. V. and VI. are for illegal acts, being acts prohibited by law.

The I. is a charge of bribery. The II. is that the Judge has presided and adjudicated in causes where he was pecuniarily interested. The III. is the celebrated Haney case. The IV. is, that he has adjudicated in causes in the subject matter whereof he had been counsel, &c. The V. is that being Judge &c., he has, contrary to the statute in such case made and provided, &c., taken and used monies paid into the Courts. The VI. is that being Judge he has improperly given advice, &c. These are all charges for illegal conduct, it being conduct prohibited by law or by some statute.

The remaining articles are for wrongful acts, alleged to be "to the scandal and the danger of the administration of justice;" but I remark in passing, they charge no guilty or corrupt intention. I will not pause now to read the other charges in detail. They are, however, criminal charges of wrongful conduct in office "to the scandal and danger of the administration of justice; but they do not charge any guilty or corrupt intention.

Now this matter of intention is a most important one. That is the great point of investigation in this case. I hold it to be essential to charge that the various acts complained of were wrongful or illegal, and were done with some corrupt or guilty intent; that in these several charges last named, where no such intent is charged, they would be clearly demurrable; but, laying aside that, I do assert again that there can be no legal conviction of the accused, until they do prove, whether they have alleged it or not, that the acts done by the defendant were wrongful or illegal, and were done with a corrupt intent. This is a well settled principle of the common law, known to every lawyer, and this is a common law proceeding in most of its incidents, and in regard to the exercise of jurisdiction. It is the *intent* of every man, which is presumed to be innocent until it is proved guilty. What makes him guilty? Why of course the guilty intent. It is that which characterizes crime; it is that which distinguishes an innocent act, which is never punishable, from a guilty act, which is punishable, and for the reason that wrong has been *intended* as well as a wrong done.

To show what importance is attached to this matter, I shall add to what I had occasion to say in my opening, although I argued it at very great length, some few more authorities, which are strongly in point, to sustain the position I there asserted, that, in order to make out corrupt conduct in office, there must be a wrongful or illegal act done with a wrong or corrupt motive. In the first place, I will read the charge made against Judge Peck, upon his trial, (page 51.)

(Here the counsel read the charge on which Judge Peck was impeached by the House of Representatives of the United States.)

I have read this to show that in that charge it was deemed material to aver, and on the trial it was found necessary to prove, not only the illegal act, and proven home, alleged against Judge Peck, but also the corrupt motive with which that act was done; and I would that every member of the court could read, each one for himself, this entire trial, with a view to satisfy himself not only that this position, which I assume, is correct; but that, acting upon it, they could have no hesitation whatever about their own duty in the premises. That case was a somewhat aggravated one, so much so that I believe the accused was condemned in public estimation, although he was acquitted by the judgment of the court? Why was he acquitted by the judgment of the court? That is the important question. The conduct of the Judge was severe—the extraordinary arresting of a member of his bar and bringing him before him on a charge of contempt of court, treating him arbitrarily and summarily, sentencing him not only to imprisonment for a term of time, but striking his name from the rolls as a member of the bar. It was therefore an aggravated case; and, unless his position was clearly right, clearly legal and justifiable, one would have supposed that there would have been no question about his conviction; and the two-fold questions arose in that case which occupied the whole court during this protracted trial.—In the first place, "Was the conduct of the Judge legal or illegal;" and here are pages of learned speculation upon that question—whether the power to furnish for contempt, to the extent then exercised, was or not an illegal exercise of power. The second question was—even if his conduct was illegal—even if he did go too far—even if he was arbitrary in the exercise of that power, was it done with a corrupt or guilty motive? was it wrongfully intended? And it was upon the doubt thrown upon that position, it was upon

the doubt whether or not he exercised that power with a corrupt motive, that he escaped conviction. But if Judge Peck, upon the testimony in that case, could escape conviction at the hands of the United States senate, I have no hesitation in saying that the respondent at the bar is entitled to the instantaneous, unanimous acquittal of this senate.

I say, then, that the burden of proof is wholly upon the prosecution, as to the intent with which the act was done—not that I mean to contend that express malice must be proven; for, as the counsel the other day truly remarked, none but the Almighty can look into the human heart and detect to a certainty the motive that may be operating there; not, I say, that the prosecution must prove express malice, for that cannot be done; but the court must be satisfied by some evidence in the case of the corrupt intent of the defendant; and the facts—for every act is surrounded with circumstances—every act is accompanied by something which necessarily goes with it as proof—the facts may be received in evidence. They must be shown by the prosecution to be such as to warrant the inference of the corrupt intent beyond a reasonable doubt. This is the principle. Not that in every case there can be proof of express malice; but that the court must be satisfied, from all the facts in the case of the existence of a corrupt intent. It is this which gives character to every act. To prove that the respondent has taken my hat and carried it out of that door is not sufficient to convict him of larceny. Why? Why the little value of the hat, the character of the respondent, the circumstances under which it was done in this crowded room, all would go, of themselves, to preclude the idea of an intent to steal. It is the fact surrounding every case from which the motive prompting the act done is to be derived. Now it is incumbent upon the prosecution to prove, not express malice, but to show that from the facts, to satisfy you that, from the facts in proof, there was a guilty and corrupt motive; and to show that beyond a reasonable doubt; and if these facts do not establish that intent; or, if there is a doubt about it, then you are bound to acquit him; and especially, if they are such as to preclude the idea of a corrupt intent, then there can be no question as to what is your duty. I will read again from this same book, (p. 290,) a single sentence from the remarks of Judge Spencer, one of the Managers of the prosecution.

"A judicial misdemeanor consists, in my opinion, in doing an illegal act *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives."

There is a clear recognition, on the part of the prosecution in that case, of the principle I contend for. They recognize it to be the duty of the prosecution to show the intent; and it shows that he relied upon these facts surrounding the case; to wit, the slight character of the offence, and the disproportion between it and the punishment ordered by the Judge, to authorize the inference of a guilty motive.

I read now from the remarks of Mr. Storrs, another of the Managers on the part of the prosecution:

"Mr. Storrs then proceeded to examine the occurrences which took place before the District Court of Missouri on the rules against Mr. Lawless, and said that he considered the whole proceeding on the part of the respondent to have been a wanton and unjustifiable abuse of his judicial authority;

"That the general temper and feeling which he manifested, was highly unbecoming his station;

"That his language and manner decisively indicated that he was acting under the influence of personal resentment;

"That the respondent himself had shown in evidence that the personal relations between him and Mr. Lawless had not been of a friendly character for some period of time before, and that he appeared to have taken that opportunity to gratify his long-cherished resentment. If the publication had been such a flagrant contempt as it had been represented here, and so dangerously calculated as he asserted, to provoke personal violence to the court, he had dealt quite tenderly with the printer who had scattered this firebrand through the state. But the press itself required not even an admonition from the bench, though in the cases on which the respondent had relied for his examples, the chancellors of England had punished the printers too for a much less dangerous offence. But in the present case, which the respondent had represented to have been of the most criminal and atrocious character, and his escape from actual violence almost a miracle, the printer was passed harmlessly through the ordeal. It was only when the name of Mr. Lawless was brought before him judicially, that the offence demanded the severest retributions of the law. Mr. S. said that the apology which had been set up, that the respondent was in danger of personal violence, had been so completely disproved that it was useless to review the evidence on that point.

"He said that the conduct of Mr. Lawless, throughout the proceedings, was respectful and praiseworthy;

"That nothing fell from his counsel that could have been offensive to a patient or an upright judge; that they had borne even more than it was their duty to submit to. On the one side, all was passion, impatience and petulence—on the other, the most respectful deference to judicial authority. The respondent was the only person whose indecorous and intemperate excitement attracted universal notice. It was quite natural that a community of freemen should have felt some indignation on witnessing this mockery of justice. Yet not a word—not a murmur was heard. The respondent went out and came back through the crowd, from day to day, and from one hour to the next, as safely as he walked his chamber. He was admonished by the arguments of able and intelligent counsel, one of whom was his personal friend, that he was advancing on tender ground. He was delicately cautioned by another personal friend in terms that could not be misunderstood; but he told him (and it was before he moved at all) that his "*course was fixed.*" He was a volunteer—it was all his own work. Should he not have paused—reflected—examined? and was there any part of his conduct which showed that he was proceeding as a calm inquirer after truth? What case or book was examined? What opinion—and of what judge did he consult? The right to personal liberty—to freedom of public inquiry—of the press and of the trial by jury—in a word, all that was dear to the American people, and which had been dearly purchased, was at hazard. Was all this not worth the reflection of a day or an hour? Were the counsel even heard? It was mockery and insult. They might as well have invoked the deaf adder, or the dead. The argument itself was forbidden on some points, as if his retribution on the victim of his resentment might be delayed too long. And when, and where else was it denied to the least offender, in a case involving his personal liberty, that he should be heard? The judgment followed immediately without reflection, as soon as the irksome forms which

had delayed it, had been disposed of, with scarcely the semblance of decency; and then followed that intemperate and disreputable exhibition, which the witnesses themselves could not adequately describe. It had degenerated to personal insult, when Mr. Lawless could bear it no longer and left the court with the approbation of his counsel. The sentence itself was proof that his judicial power had been abused. No one could read the publication by Mr. Lawless, and not say, that if it had even misinterpreted the opinion on which it commented, a public admonition only would have amply vindicated the offended dignity of the court. The suspension of his license was a severe punishment of itself. But it was not enough that his professional character should have been brought into some disrepute, and his livelihood taken away. He must also be made to feel the respondent's personal power, and submit to the further degradation of an imprisonment. Mr. S. said that there was another part of the case, which even his counsel had not explained. Several months after the suspension of Mr. Lawless had expired, and when he first appeared in court again in a distant part of the state, the respondent called out from the bench to the clerk of the court to know if Mr. Lawless' suspension from practice had expired;—as if in ignorance of the terms of his own court in the previous year at St. Louis! Yet with all these accumulated proofs of passion and violence it had been said that the respondent was a man of placid temperament and mild and gentle manners. If that were so indeed, it greatly strengthened the unfavorable inference that in these proceedings, he had been actuated by personal resentment or some unhallowed motive.

"Mr. Storrs said, in conclusion, that such was the case on the part of the House of Representatives, on which they had demanded in the name of the American people, the judgment of this high Court on the judicial conduct of the Respondent. If the Court was convinced upon the evidence, that the usurpation of the unlawful jurisdiction which he assumed and the violation of the constitutional securities of the American people which he had committed, had sprung from the honest error of his judgment, God forbid that he or any judge should be condemned for that only. He should consider a conviction in such a case, a great public calamity. But it was not to be tolerated that in any case, before any judge, involving the most sacred privileges of this free people, he should recklessly venture on this forbidden ground in defiance of all the warnings he might receive, and then demand here that his usurpations should be covered by the mantle of charity only. He had not been called to answer for an opinion given in the hurry of a trial and where the ordinary course of the administration of his duties required him to pronounce a hasty or immediate decision. Nor had he been surprised into any momentary feeling from the accidental excitement which may sometimes occur in the discharge of the duties of any judge. The case presented no apology or palliation from such circumstances. The whole proceeding was his own work—he voluntarily prepared it and deliberately executed it. There was no proof that he had anxiously, carefully, or patiently devoted a moment's reflection to the examination of his judicial powers. He disregarded the suggestions of friendship and the admonitions of counsel. The very excitement which drew that crowded assembly into his court-room should have admonished him to look carefully to his jurisdiction and be well assured that the authority which he assumed was sustained by the constitution and laws of his country. It was not to be tolerated, if he had even

then seen this publication for the first time, that he should have retired to his closet, opened a volume of commentaries, replaced it hastily upon the shelf, and putting on his cloak, have hastened to his court-room, and investing himself there with his judicial armour, have sent the sheriff for a free citizen, before the excitement of his feelings had subsided—that as his resentment quickened and his pulse beat faster under the short delay of a hasty and ill-prepared defence by counsel who were accidentally in court, he should have seized the first moment of which the forms of law, with the least appearance of decency, permitted him to avail himself, to bring down his vengeance on his victim and then appear before this high Court to plead the errors of his judgment as the apology for his usurpations, against the violated liberties of his countrymen and the insulted sovereignty of the constitution. Charity, as well as mercy, was indeed a heavenly virtue. It 'blesseth him who gives and him who takes.' But before the Respondent claimed that he should 'find mercy, rendering none'—he should have felt assured that it was not a case in which it could be fairly alleged against him upon the evidence, that he had never exercised his judgment at all."

I now read from Mr. Buchanan's argument, another of the Managers for the prosecution—a single paragraph:

"I have made these remarks in reply to the argument of the gentleman, and not because they have any material bearing on the case now before the Court. When I came to sum up the testimony (which has hitherto I think been too slightly examined,) I trust I shall be able to make it as clear as the light, that the Judge acted under the influence of his evil passions and the stings of mortified vanity, and not with that coolness, caution and dignity, which ought ever to be found upon the bench, and which will ever be respected there. Nor should I consider his conduct less reprehensible, had he been able to command his temper, and do an act of cruelty with calm and deliberate malice.

"I have now arrived at the great points of the cause. And I shall in the first place proceed to show, that the conduct of Judge Peck was an express violation of the Constitution and laws of the country; and in the second, that from the circumstances attending the case, the Court ought to infer a criminal intention. The first will be a question of law, the second of fact. If I should succeed in establishing these two propositions, then I shall demand the judgment of this Court against the respondent. I well know that the feelings of mercy are far more congenial to the breast of every member of this Court, than the dictates of stern and inflexible justice; but yet I trust they will remember that in pardoning this Judge, if he be guilty, they may attack the first principles of civil liberty, and destroy one of its firmest foundations."

The able and closing Manager of the prosecution in that case, only claimed the conviction of the respondent in the case, in the event of his establishing two propositions—first, "the illegal or unconstitutional act of the respondent;" and next, that "from the circumstances of the case, the court could infer the criminal intention." It was a concession of the entire point I make in this case.

I read now (page 370) from the argument of William L. Meredith, one of the ablest lawyers of Pennsylvania—and of the United States in fact:

"If the publication of Lawless did not amount to a contempt, or if in punishing it, the respondent transcended the limits of his power, did he act honestly, though erroneously, or from a malicious intention? This intention is dis-

tinctly charged in the article of impeachment, and is essential to constitute guilt. In every code of morals and of law, the criminal mind must accompany the unlawful act. If the act be lawful all inquiry into the intention is unnecessary; if it be unlawful, it then becomes proper to consider with what mind it was done. There must be a concurrence of act and intention to make the offence. This is the humane maxim of the law, which must govern this, as it governs all other cases. Although for judicial acts within the proper sphere of their jurisdiction, the wisdom of the law has exempted Judges from all responsibility, civil or criminal, before the ordinary Courts, yet here, in this High Court of Impeachment, the constitution has made them amenable. Not, however, for error in judgment—not for unintentional wrong—but for corruption, malice, wilful wrong—done under color of law. An impeachment for mere error in judgment is contrary to all the principles of our judicial institutions, as well as to the whole spirit of criminal justice. There must be a wilful abuse of authority—plain and clear proof of malice or corruption. Is there such proof in this case? Where are we to look for it? Is it to be made out only by inference? Where are the circumstances which justify such an inference?

"Has there been so gross and palpable a departure from all precedent, that no imputable degree of ignorance can account for, and which therefore ought alone to be attributed to a corrupt mind? The undisturbed current of decision—the accumulated precedents of every age—the authorities with which this case has been loaded and oppressed, answer this question:—decisions not of English Courts alone, but of our own Courts, in every stage of our political course, under every change of the political constitutions of the States of the Union—decisions that have passed through the ordeals of impeachments and conventions, untouched and unaltered.

"Can the inference be made out, by any proof in the cause, of personal ill-will on the part of the respondent to Mr. Lawless? There is no such proof. Will you look for it in the natural temper and disposition of my client? If, indeed, that temper had been proved to be arbitrary, cruel and vindictive, there might be some color for such an inference. But how differently has he been described to you by those who have known him long and intimately! Sir, the richest consolation—that which has borne his spirit up above the storm and tempest of this prosecution, is the suffrage of every witness who has been examined, to a reputation unstained and unblemished—to a disposition full of gentleness and kindness, which has made him many friends, but never lost him one—to a judicial career of irreproachable purity and integrity, against which, until now, complaint has never breathed a whisper.

"But it is, I understand, to the particular transaction itself, that the honorable Managers point for their proof. It is said, for example, that Judge Peck's language was rude, abusive and contemptuous; that knowing, as he must, Mr. Lawless to be the author of the publication, he presumed to speak of it as a false and scandalous libel. Why, sir, regarding it as a libel, being about to punish it as a libel, was it at all remarkable, that he should use the appropriate language of the law in defining a libel? How did Chief Justice McKean describe the libeller in Oswald's case? What was the language of the mild and courteous Tilghman, in addressing Duane? Where are the rules for judicial decorum and politeness? Is a judge, under peril of impeachment, to speak by the card, to measure every word he utters, in describing an offence, lest he may wound the feelings of the offender?

"But again—Lawless was frequently interrupted by the respondent, while arguing the rule against Foreman. Why, in the first place, Mr. President, let me appeal to every gentleman accustomed to Courts of justice, whether anything is more common. How natural was it upon this occasion?—Mr. Lawless was, it seems, examining the truth and accuracy of the publication, by comparing it with the opinion, and the interruptions consisted in the Judge pointing to passages, which he thought necessary should be noticed. That which serves, however, best to show the character of these interruptions, is the fact attested by several witnesses, that although Mr. Lawless is very irritable, easily moved, and most impatient of interruption, either from the bench or bar, he made upon this occasion no such complaint."

And so I say in this case. Where is the proof of malice or corruption? If it is to be inferred, as it will be maintained in the argument of the counsel, where are the facts; where the circumstances from which it can be inferred; where the facts and circumstances which do not preclude such an inference from the mind of any honest man?

I shall now, Mr. President, proceed to examine several of the charges which have been preferred against the Respondent, with reference to the principles of law to which I have called the attention of the Court; and I shall do this very briefly, and shall only dwell upon those charges in which I think I can add something to the argument submitted by my associate; and I do even this under circumstances of embarrassment from the fact that on a previous occasion I commented briefly upon these charges, doing it then, however, only with a view to call the attention of the Court to the prominent facts, and to state such proof as we should expect to introduce in regard to those charges. An additional circumstance of embarrassment now is, that I am compelled not only to follow in the course which I before pursued, but also in the course pursued by my associate. We have not had the benefit which is ordinarily, nay, I may say universally given, in the administration of criminal jurisdiction, of knowing from the other side, where they rested their case, where they rested the detail, what are the points, in law and fact, upon which they rely for conviction. It is therefore on my part an effort of extreme personal exertion.

I regret that I could not have learned the points which they mean to drive at the defendant. It would at least have furnished something to provoke argument; but I am deprived even of that poor comfort and inspiration. The whole fire is left for the conclusion of the case. We are laboring in it somewhat in the dark. I know very well that I shall feel, when I shall have listened to the distinguished counsel who will close this case, how much better an argument I could make, if I could follow him, and how much pleasure it would give me to meet some of the propositions which he may possibly introduce.

And now as to the first Article: In order to sustain this charge it is incumbent on the prosecution to prove, to make out to the satisfaction of the Court, that it is a case of bribery; and not only of bribery, but of clear, positive, unequivocal bribery. That is the position of the prosecution. It is well defined. It was announced three weeks ago that the first charge was a charge of direct bribery. The Court will hold them to that statement; and it requires no exercise of the power of the Court to enable them to do that because the rule is well settled that a man cannot be convicted of one matter upon a charge of another matter. Either this charge must be sustained or a charge of bribery *not be*

sustained, or else the defendant goes acquitted. Now upon its face, I shall not stop to criticise it in detail. It requires a good many readings in order to ascertain what it does convey. I suppose no one will contend that, on its face, it is a charge of bribery; and I was surprised when I read in the report of the gentleman's speech, that he took that position. It does not even resemble an accusation of bribery. It simply charges, and alone it charges a collusive arrangement, after a note was received for the amount of that loan to permit it to be paid, when in fact it was not paid, and when the money was received by the respondent and kept as a gift as Sanderson designed it should be. Is that of itself a charge of bribery?—Certainly not. It is a charge of a loan subsequently converted into a gift.

But it will be contended—I suppose it must be contended—and that is the proper subject of inquiry here: by the proof which has been submitted, have they satisfied this court, that it was a bribery, or that it was designed to be a bribery. I say then, inregard to this charge—for I do not propose to recapitulate the points made by myself on a former occasion, nor those made by my associate yesterday—I say, it was nothing but a loan of money, as it was understood to be by both parties, until after the decision in Court. It was nothing but a loan of money, as understood by both parties until after the decision—not until after the decision announced in the conversation with Sanderson, in the United States Hotel; not until after the decision was announced to me on the Sunday previous; but until after the public decision in the Court. It was nothing, I say but a loan of money in the minds of both. Now there must have been a corrupt intention on the start; there must have been a sinister motive at the outset, in order to admit for a moment, the idea of bribery. I suppose there must be two parties to such a transaction; but here it was regarded as a loan of money. What did the respondent apply for in this interview with Sanderson, which probably was on theMonday or Tuesday preceding the decision in open Court. What was his avowed object? He made the proposition for a loan. Not only so, he stated the reasons of his proposition—why it was he wanted the loan, and what he wanted to do with the money. He asked for no gift; he asked not to be bribed; he asked not for money with reference to a decision he was to make; but announcing or having announced one which he had made, he applied for a loan of money, and stated the object. He fixed the amount himself at $200. What did he assent to? If there was a compact, it was either an honest, or a dishonest one; it was either a loan or it was a bribe, or at least an incipient bribe; something designed in the end to be made a bribe, if such a thing could be possible. But what did he assent to? He simply assented to the proposed loan of money. Now this is the testimony of the prosecution; and the testimony of the prosecution—not ours.—The testimony of the prosecution, itself makes this transaction a loan of money, proposed by the respondent, and accepted as such, and only as such, by Mr. Sanderson. It was not until the August or September following, that Sanderson first disclosed to the Judge his intention to make that money a gift. It was not until the respondent had been married, gone East and returned; not until Sanderson had gone East, seen Theodore Perry, and returned; that this idea of Sanderson's was ever disclosed to the respondent; and then it was, on the occasion of the respondent's proposing to pay back to him the amount of money which had been loaned. Now these stubborn facts are before you, and you must

receive them. They have been placed before you, not by us, but by the party who sets this transaction up as a bribe. If it was a bribe, if a gift, if an unconditional loan of money never to be paid, why did the respondent propose to pay it? Why send for him to receive it; why meet him coming down the street and propose to pay the money?—an act itself which indicates the nature of the transaction; an act consistent with the idea that it was a loan of money, which a man of honor, although no note had been given, he felt bound to pay as borrowed money. Then it was that Sanderson disclosed his idea of making it a gift.

Another fact shows the same thing. Sanderson swears that he did not know what was his intent up to that time, that he did accede to the Judge's proposition for a loan, and did let him have the money as such; and then afterwards did, from an idea of making it a gift, and then charged it over to Perry, his principal. And consistently with making it a gift, he proposed it as such to the Judge, and carried out his intention by avoiding to receive it back, and by telling him it was of no consequence, he could pay him some other time, and that whenever he needed it, it would be so much money which he had deposited somewhere, and he could call and get it. The reply of the Judge on that occasion is another significant fact to show the motive of the transaction. He declined to receive it as a gift; and, upon Sanderson's urging it, alluding to the great benefit the Judge had conferred upon him, the Judge attached no importance to that, and held it up before him, as a mere act of duty, which he was compelled to do. Then so far, and up to long after the decision had been made in Court, this transaction was regarded by both parties, and especially by the respondent, whose motives alone we care for here, as a loan of money. If so, then what becomes of the idea of bribery? For it must have been bribery before the decision, in order to make this a pertinent charge, or in order to give it any force or effect whatever. This is a demonstration as it appears to me, that on the ninth day of June, when the respondent pronounced that decision in the Circuit Court, he just stood in the relation to Sanderson of a man who had received from him $200 of borrowed money. That, however, was no corruption. *There* was no bribery. And besides, bear in mind another fact most material to this case—that at the very time when this loan was besought and granted as such, Judge Hubbell had in point of fact decided the case.

I have just said that the proof precluded the idea of bribery, from the conversation and language of the parties when it was going on. I say it does preclude it, unless some person here supposes and assumes that a Judge cannot borrow money of a friend who has a case in his Court; or unless that necessarily implies corruption. If that be the hypothesis, let us learn it. If a Judge is to be precluded, because he is a Judge, and because as such, he has got to pass upon a case in which he is concerned, and may be accused of bribery; if a Judge, on such grounds, is to be precluded from borrowing money of a friend, or from asking him to endorse his note, or from doing any of those other favors, which we are all liable to have to call upon our friends to do at any period; let us be assured of it now. It may raise a suspicion in the minds of those who are disposed to suspect everything and everybody; but even that suspicion is repelled in this instance, by the unlimited proof which the prosecution has introduced here of the real transaction itself. It shows most conclusively that the

Judge could not have contemplated any impropriety, or else why did he do it? Why not have borrowed of somebody else? Why do it in a public manner? Why do it, when it may be known and exposed to all the world? It all shows the innocence of his intentions. The fact was, he was asking one whom he looked upon as his friend, to accommodate him under the circumstances in which he was placed at the time.

Did it afterwards, then, by any conduct which has been disclosed here in evidence, assume the character of a bribe? If that is maintained, I ask, what was it for? what the object? what object is disclosed even in this their own evidence? The very circumstances under which the money was left, show that it could not have been a bribe. The very circumstances under which the money was left by Sanderson, in the room of the respondent, at the time of the taking up the note which the respondent had given him, show, to my mind, most conclusively, that it could not have been a bribe, nor intended to be a bribe.

Again, the amount is a circumstance to be taken into consideration in connection with the idea of bribery. It is in proof that the cause pending was an important one. It was a summary proceeding by attachment, involving a debt to the amount of $21,000 and upwards. It is in proof that Sanderson, who was the agent of the plaintiff, paid for services to his attornies in that cause, some $1,250. Now, if he felt sure of his case from as long ago as when he met Judge Hubbell at Madison, which was immediately after this suit was instituted; if he had got the Judge's ear, especially if he got encouragement from him, and more still, if he extracted an actual promise from him of what he would do, what nonsense it was for him to pay that large amount of money to counsel for services in the cause.

Again, what sort of an opinion must any man entertain of the respondent, to believe that, in a suit hotly contested, involving $21,000, with all the pecuniary fate of Sanderson for life, perhaps, or for the present at any rate, involved in it, he could have expected, or that the Judge would have consented, for the small bribe of $200 to decide the case in his favor? Is not this asking a little too much for men who know human nature, and especially men who know the respondent? I think you would all give him credit for shrewdness enough, if he was to be bribed, to set his price a little higher than $200! It is making him look too small. It is unworthy of this prosecution to say that he is so contemptible a scoundrel that he was bribed for the paltry sum of $200.

Again, this transaction between Sanderson and the respondent became a public one, else how did it get before this committee. How has it got before this Senate? It was long ago a public thing. How did it become so? Who disclosed it? Is bribery carried on in your public streets in public places? No; it is done in secret. If this is bribery between Sanderson and Judge Hubbell, who disclosed it? Which one of them? for it must be the one or the other. There is no proof of any witness having seen it. It must have come to light, therefore, necessarily from one or the other of the parties to it. Which one had disclosed it; which one has been fool enough, if it was a bribe and designed to be such, to have advertised it to the world, and to have exposed their own infamy; and yet, that is the conclusion you are forced to, that there has been a bribery gotten up between these two parties, and of such a contemptible cha-

racter too! Well, after the bribery, or after the decision, one or both of them disclosed their guilt to the world! It is a monstrous proposition. It is not human nature; it will not be believed.

But in all this discussion of the matter, I have left out of view another and most important fact, and one which, in my own mind, entirely disposes of the accusation. At the time of this transaction in money, the decision had been already made. It had been already not only made, but announced to such persons, and under such circumstances, that it might be universally known; no limitation, no injunction of secrecy, were imposed upon those to whom it was communicated. Now, if the decision of the cause had been already made, and had been promulgated, although not in Court, yet privately and in good faith, it is satisfactory evidence that this transaction, which was subsequent, could not have been, by any possibility, a bribe. I say, there is no evidence to indicate anything of that character. A man cannot be bribed to make a decision which is already made and already announced. I take it that that is a demonstration of the falsity of any idea of bribery.

Now, the proof shows that on Sunday evening, if I am believed, the 6th day of June, being about to start for Baltimore, and being very anxious to learn the decision of this case as I should see the plaintiff in New York. I called upon Judge Hubbell and asked for the decision. The papers were then before him, though the case had been in his hands some days. He said he had just been looking them over and was satisfied that he must sustain the attachment. This was yet unknown to Sanderson. He was not even in Milwaukee, having not yet returned from New York. I left on the 7th of June. Sanderson must have returned afterwards, either the same day I left or the day after; but probably on Tuesday. Then in an interview with the Judge, in a casual meeting at the United States Hotel, where they both boarded at the time he made the inquiry of him which I had made, and learned that he had decided the suit; and on being asked if he had any objections to communicate to him how he had decided, he replied that he did not know as he had, and told him the same that he had previously told me. It was then immediately after the interview that the respondent proposed to Sanderson that he should loan him some money. Now here the decision had been announced. It had gone as fast as steamer and railroad could carry it to the plaintiff in New York. It might go in an instant after communicating to Sanderson, by telegraph to New York; yet, until after this decision had been announced, there is not a word of evidence in regard to any proposition for a loan of money.

Sanderson has positively sworn, that there was none whatever, and he is a witness for the prosecution; and yet you are asked to believe the monstrous proposition that after announcing his decision as he did on Sunday, a proposition was made to bribe Judge Hubbell to make a decision that he had already made. Most excellent logic! Worthy of this prosecution!!

I was going on to remark, that another circumstance which they have proven, is equally inconsistent with their logic; and that is, the opportunity sought for the bribery—in one of the most public places of the city! Why, it might have been in the board of trade, or on the most public corner of our city, as where it was. A casual meeting in the dining room hall in the U. S Hotel, one of the most public places of our city, was the place where every particle of their

conversation took place; where the arrangement for the loan was made, and where Sanderson went out, got the money, and delivered it to the respondent. Is that to be believed, that if a bribe was contemplated by either of these parties, the opportunity for it would have been sought where everybody could have seen it, and heard it, and there to have entered into a detailed arrangement which was to be bribery? Now before the counsel can find one particle of even unjust suspicion to the conduct of the respondent, in this case, he must throw out of it every fact, and actually discredit the testimony of his own witness, Mr. Sanderson; and when he throws that out, then where is there any proof whatever upon this charge. He must take the proof. He must credit that witness. He is his own witness; and when he does credit him, he must credit him fully. He must take all the facts and circumstances, and must reconcile them all with the hypothesis that this was a case of intentional bribery.

Another fact is in proof here—that the final transaction of leaving the money in the chair by Sanderson, when the note was taken up, took place before these impeachment proceedings were commenced. I know not why that was made a matter of inquiry except to throw discredit and suspicion upon the transaction by making it appear that there was an attempt to cover it up, to make it appear all right, although it was infamous; in fact, after these proceedings were contemplated against Judge Hubbell, and when he might be called upon to account for his conduct. How then did it become public?—In point of fact, if you believe Sanderson, the money was left before the Legislature was in session, and of course before any complaint was made against Judge Hubbell. He persisted to the last in his design which out of his gratitude was creditable to him, in my judgment, to make that loan to him a complimentary gift, a testimonial, if you please, of his friendship and gratitude, which he himself contemplated bestowing at another time, in another direction. This is the worst construction the proofs authorize us to put upon it. And is it to be believed that this pretended covering up was devised after these proceedings were threatened? And if it was to avoid exposure, how then became that transaction also public? Why was it not in secret?—Which one told of it? Have they been the fools to go into a transaction of bribery, and publish it to the world; and then go into another transaction to cover the first one up, and then publish that also to the world?—No! It was a most foolish and most simple transaction, if that was the intention.—If it was to cover up a transaction of bribery, I would say and swear, and you would give judgment that they were both consummate fools. But if it was a transaction on the part of Sanderson, as a last effort when Judge Hubbell was urging him to take back the money which he had loaned; if it was a device of his to carry out his intention to make him a gift, and force it on Judge Hubbell; then the conduct was all natural—natural on the part of Sanderson, as carrying out his fixed intention; natural on the part of the respondent as at last consenting to receive a present which a grateful friend was anxious to make to him.—The transaction in that way, and in that way alone, is accountable for, on principles of ordinary human nature.

I am not now prepared to say that a Circuit Judge who is paid by the State, the niggardly salary of $1500 a year, with a family to support, and the position of a gentleman to maintain, if he shall honestly, and in good faith, decide

an important cause in favor of a fellow citizen, and that citizen, in gratitude, shall see fit to bestow upon him a present, he is to be damned for receiving it. And if even at first, he shall receive the money as a loan, and after repeated offers and efforts to repay it, he shall yield to the importunities of his friend, to consider it as a gift, and shall as such accept it, I cannot see either bribery or turpitude in the transaction. It is no uncommon thing in human experience. Our clergymen have generally miserable salaries, and many of them could not live without donations from their friends. And yet who ever supposed, that for accepting them, they were either as ministers or as men, the less pious, disinterested or pure? Who ever stigmatised the transaction as a bribe. Who ever charged that the sermons they preached, or the prayers which they offered up to God, were purchased by the money which in gratitude had been bestowed, and in friendship had been received.

Another circumstance, which is written all over this proof, is, that in all the exertions of this committee of the legislature, which exercised an industry never surpassed, which devoted weeks and months to hunting down the respondent, and which seems to have been inspired by a malice seldom equalled, they have not, in their whole course of investigation, been able to find another single instance of bribery, another single instance where it is alleged that he received money as a consideration for a decision which he had given, or was to give. Is it not probable that, in the ordinary course of things, if he was to be bribed, if he was corrupt, holding court as he did forty weeks out of the fifty-two in the year, doing harder labor than any five lawyers in his whole circuit put together; if he was a person who could be bribed, or even tampered with, is it not probable that some other suspicious case would have turned up where it might have been proved that he had been the recipient of money. No other case is hinted at, nor pretended to be known; and that fact may be admitted as going to preclude the idea that this was a case of bribery. But it may be said that the Judge delayed his decision in the case for nearly three weeks after the argument had been submitted, and that he was holding himself in the market for a bid upon his opinion. To this I reply, that the Judge decided the case before Sanderson had returned to Milwaukee, and had announced the decision to myself. I further reply, that the Judge in the mean time was constantly and most laboriously engaged in jury trials, involving the most important civil liabilities and the issues of life or death. And if I wished to pay him a passing compliment for this devoted attention to the duties of his office, I could not do it better than by referring to the fact, that on the last day of the argument of this very case he sat upon the bench from the opening of court in the morning until a late hour in the evening without adjournment or interruption.

But there is another and a final view of this charge, which I wish to present to you, and it is the very merits of the case out of which the charge has grown. It was an action of assumpsit to recover about $21,000, commenced by attachment and based upon the fraudulent conveyance and assignment of the property of some of the defendants. I shall not pause now to present to you again the record of the case nor the facts in proof. I shall not pause to argue over again the merits of a case in which able counsel were employed and which occupied, most laboriously, five days of the time of the Circuit Court in the midst of jury trials. You have from Mr. Emmons a concise and intelligent

statement of the nature of the case, the issues made up, the proofs submitted, and the points relied upon. If you believe him, the case made out presented a clearly proven and stupendous scheme of fraud. No effort has been made to discredit that testimony, or to present any different view of the facts and merits of the case. I appeal to you, then, to say what other decision could have been made by an intelligent and honest Judge? He needed not to be bribed: He needed only to be honest. It was a case of magnitude involving a large pecuniary claim and weighty accusations against the character of the defendants—it was warmly contested by able counsel—the eyes of the public and the bar were upon the Judge, and the decision which he made was not only a matter of judicial duty but of judicial necessity.

I now proceed to the second article of the charges against the respondent, which is, that "the Judge has adjudicated in cases where he was pecuniarily interested," &c. The first specification is "that he, Levi Hubbell, having purchased from one Jonathan Taylor a certain judgment," &c. I will not, Mr. President, take up the time of the court by going in detail into the testimony in regard to that transaction of the Taylor judgment. I take it up at the point appearing in proof that the judgment was assigned by Taylor which had been rendered by Judge Whiton in this place, and assigned to Henry P. Hubbell. We find that, afterwards, by an arrangement between Taylor and Judge Hubbell the respondent, the judgment was purchased by him and paid for to Taylor. We find that the judgment was subsequently in the hands of Henry P. Hubbell, and made a matter of negotiation between him and Levi Blossom; that Blossom, after an interview with Taylor upon the subject, in which he learned that there was no defence to it, that it was all right, and negotiated with Henry P. Hubbell for the purchase of it; and that he suggested to Henry P. Hubbell to get an assignment of it to him directly from Taylor. He stated the reasons for making that request, and in accordance with it Henry P. Hubbell did afterwards procure and deliver to him an assignment of the judgment directly to him, Mr. Blossom.

Now here from this proof is deducible a fact that Henry P. Hubbell had become, in some way, no matter how, by a transaction with Levi Hubbell, the owner of that judgment. He had it in his possession by virtue of that assignment from Taylor which had first, to be sure, been executed to him as a matter of form; but he was then exercising over it the right of ownership, and was using it as his own property, and selling it as his own property. Mr. Blossom then became the purchaser of it, making a *bona fide* transaction with Henry P. Hubbell to whom he paid the consideration of the purchase. Learning that the city was unwilling to pay it, having sent them a letter, requesting them to pay it, having had the matter referred to a committee, which had reported in a way injurious to his feelings, insulting him as he thought, requesting him to pay his taxes, and offering to offset it, when in fact he had thousands of dollars of their orders in his office, then he made up his mind that he would try the matter on, and compel the city to be honest for once and pay in cash its legitimate indebtedness; and thereupon he employed Mr. Watkins, a very respectable lawyer of our city, to file a bill, commonly called a creditor's bill, with a view to enjoin the city from receiving or paying out money; enjoining also its officers, its treasures, and, I believe, Mr. Mitchell's Insurance Co., as it

was supposed the city might have some funds in his hands. He found, however, that the city was still disposed not to pay it, that thay had passed a resolution instructing the treasurer to go on and to receive monies that were due to the city; and an application was made to the court of the city, for such a modification of the injunction as would correspond with the resolution which they had passed. That motion was resisted; but resisted by whom? Why, by Levi Blossom, the complainant. But it was granted by the court, and the injunction was so modified as to meet the wishes of the city, authorizing them to receive money. Blossom was annoyed and found fault with the action of the court. In the meantime, several gentlemen in the common council applied to Blossom with a view to arrange a settlement. A resolution was passed by the board, authorizing a settlement, by giving Blossom bonds to the value of $1,200. Blossom, it seems, had made up his mind to go into the settlement they had offered to make. His conversation was to the effect that he would receive two five hundred dollar bonds, and one two hundred dollar bond. But still he had insisted that he would have nothing but cash; and he meant to insist and abide by it. Then it was that he made the arrangement with Henry P. Hubbell again, by which he re-transferred this judgment to him, and received in cash, the amount for which he sold it to him, and Henry P. Hubbell immediately called upon the city authority, and got from them the order of $1200, signing the receipt of it in the name of Levi Blossom, to whose order it had been granted. Henry P. Hubbell immediately converting that order into a bond, which bond was afterwards in some transaction, I suppose, between Henry P. Hubbell and the respondent, passed to the respondent, and was by him negotiated to Mr. Mitchell, and the proceeds paid over to him.

Now this is probably a succinct statement of the history of the transaction in regard to that bond and that judgment. But the point of inquiry is whether the Judge, at the time of the pendency of that proceeding in chancery, and at the time of making the order modifying the injunction, was pecuniarily interested in the result; for that is the point, and the only point in this charge. What was the nature of the transaction between him and Henry P. Hubbell; how it passed from him to Henry P.; how Henry P. was authorized to negotiate it; how, subsequently, when the bond was received by Henry P., in the name of Levi Blossom; how it passed into the hands of the respondent, is a matter of no sort of consequence, so far as the real charge here is concerned. But if you do believe Mr. Blossom, during these whole proceedings in chancery, he was the *bona fide*, absolute, unconditional owner of that judgment. Now, is he believed or disbelieved. I say, if he is believed, then there is an end to this matter. He swears positively upon this point, that he was the owner —the real *bona fide* owner—as absolutely, he tells you, as of any other property he had. Now, we know Mr. Blossom is a man of wealth. He has a great deal of property of every manner and description; and, I know of no stronger expression he could use, than to say he owned it as absolutely as any other property he had. He employed Mr. Watkins as his solicitor—he paid him for his services—he wrote the letter to the common council—he made the arrangement with Rogers to receive the bonds, and he was annoyed at the conduct of the city. Why, all this temper on the part of Blossom? Why was he angry with the common council? Why did he swear that he never would settle that

judgment for orders; but would have it dollar for dollar in specie, if he was dealing for another? Why pay him, if he was but a cover for Levi Hubbell? His whole conduct was that of a *bona fide* owner of the judgment, and inconsistent with his barely acting as a foil or cover for Levi Hubbell. Blosso n has business enough of his own. He does not pay lawyers for carrying on and transacting such a business from day to day, when it is not his own. Then, if his testimony be credited, at the time of making that order, modifying the injunction, the respondent had no earthly interest in that judgment; and it must not be forgotten that Judge Hubbell acted directly against the wishes and interest of Blossom; for Blossom had instituted that suit to compel the city to pay the judgment. He had tied them up so that they could not receive, nor pay out moneys. He had tied up the whole financial proceedings of the city. That would have brought them to terms pretty soon, but they filed that motion to modify the injunction so far as to enable them to receive money, and passed a resolution directing the treasurer to go and violate the injunction. So extreme was their position, that they were compelled to resort to this rebellion against the process of the court. Blossom "had them tight," to use an ordinary expression. How plausible the position that will be taken by the other side, that the Judge and Blossom had a common interest in the judgment, or that Blossom was the mere cover of the Judge! And yet the Judge made a decision directly against the interest of Blossom, his representative, and, of course, directly against himself! This is the position, and the difficulty, into which the proof drives the prosecution. But if the Judge did thus decide against himself; he is, in my judgment, entitled to some degree of credit for his motives. But in this case the proof does preclude, does forbid, the idea that Levi Hubbell was at that period at all interested in the result of that suit; and, if he was, he made a decision most directly in the face and eyes of his own interest.

I shall now proceed to the second and third specifications, which I shall consider somewhat together. They relate to the transactions in the suit of Graham against Humble, upon a promissory note—and a proceeding in a chancery suit—to foreclose a mortgage on the property of Humble, the maker of the note, Miller and others. The note in question had belonged to the respondent. It was transferred to Graham, for the purpose of commencing a suit upon it. There was then no county Court; and it could not be sued in the U. S. Court, so as to recover costs. It was therefore sued in the Circuit Court. Judgment was recovered, execution issued, and a sale was had upon the execution; Henry P. Hubbell became the purchaser for the amount of the judgment and costs, receiving a certificate of the Sheriff's sale. The execution was returned satisfied, and, of course, the judgment was satisfied. Now it will not be disputed, I suppose, in the first place, that the legal right existed to bring the suit in that Court, although Judge Hubbell was the presiding Judge. But it is contended, that, under the law, he could not preside and render the judgment, because of the prohibition of the Statute. Well, I have to say in regard to that, in the first place, that it was but a base proceeding in form. It was but a proceeding by which the machinery of the Court was used, where there was no issue, no controversy, no contending parties, no merits to be discussed, or to be passed upon. It was a mere matter of form, as much so as the issuing of the summons, which it is not disputed could be done in that Court.

Let us examine the statute. During the progress of the argument, the Court has been referred to two provisions of our law, obviously designed for the same general object. The first is on page 761 of the appendix to the Revised Statutes, being part of the act approved June 29, 1848, and provides as follows: "In case the Judge of the Circuit Court shall be interested in any cause or causes, pending in said Court, &c. &c., the said Judge shall not have power to hear and determine such cause or causes, except by consent in writing, of the parties thereto." The other provision may be found on page 440 of the Revised Statutes, which took effect in January 1850, and is as follows: "In case the Judge of the Circuit Court, shall be interested in any cause or causes pending in such Court, &c. &c., the said Judge shall not have power to hear and determine such cause or causes, except by consent of the parties thereto," &c. The only difference between the two, is, that to give the Court jurisdiction, the former required the consent in writing and the latter did not. It will be contended that at the time of the judgment in the Humble note, the former provision was in force, and there is no proof of written consent; but my object in calling the attention of the Court to the distinction between the two provisions now, is, because it has an important bearing upon the th rd specification, as well as various others of the charges against the respondent.

Now, hearing and determining a cause import necessarily a trial. It is the hearing and determining some issues of fact or law upon the proofs. The inhibition is to prevent the Judge from hearing and determining a cause in which he is interested, or has been of counsel. The reason of the rule of law, that is here prescribed of itself presupposes that there must be a cause with parties who appear with conflicting rights—parties with proofs—something that is to be heard, and something that is to be determined. Now was the case under consideration a "cause" in this sense of the term? Not at all. It became a suit represented by only one party—the plaintiff and in which the other party was in default. There was nothing left for the Judge to "hear and determine" by any possibility. There remained nothing to be done except upon that default to enter up the judgment upon the note.—There were no conflicting proofs—no merits to be passed upon. There was nothing in it about which his mind could be influenced either one way or the other. There was but one act of mere form to be done. This interest in the result could not modify nor affect it. Finch had withdrawn his appearances. After the Judge had stated his interest, he proposed to remove it to another Circuit. Finch said, "no, there is no necessity for that, because, I am going to withdraw my appearance for the defendant." I, too, say there was no necessity for it. Mr. Finch interpreted the law correctly when he gave that opinion. He saw that there was no proofs to be offered and that there was nothing to do but to enter up the judgment, and he was of the opinion that the Judge was not compelled to send it to some other Circuit, and that the law machinery of the Court might be made use of to enter up the judgment in form. Again, I say, the judgment was satisfied by the sale upon execution at which Henry P. Hubbell was the bidder.

Then, I say—and this is in reference to the third specification—that at the time of the filing of the bill of Miller against Humble for the foreclosure of the mortgage, neither Graham nor the respondent, whom he represented, had any interest as a judgment creditor, because the judgment had been paid. Graham

was the plaintiff in the judgment. He represented the respondent, and he was made a party, I know not why, but perhaps it was because he was apparently a judgment creditor, and it escaped the attention of Finch that the judgment had been satisfied; but at that time neither of them had one particle of interest, as judgment creditors in the estate of Humble. Henry P. Hubbell had an interest—as the possessor of the certificate of the Sheriff's sale, which had been issued to him. He was also the representative of the respondent, but he was not made a party to that proceeding. He had an interest by virtue of that certificate of sale. He had a right of redemption of the premises against the decree which was rendered by Judge Hubbell, and might acquire a complete title to the property. The decree of foreclosure and sale was directly adverse to the interests of himself, and of Henry P. Hubbell who represented him, because it might operate through the sale, to cut off the interest of Henry P. Hubbell, unless he, Henry, could file a bill to redeem, on account of not being a party to that suit. Henry P. Hubbell was not a party here. He was not called upon, nor could he come in and set up the interest which he had, as owner of that certificate to redeem the property. Yet the decree sanctioned the sale with out his being a party, and might operate of course to extinguish the interest of Henry P. Hubbell, which was subsequent to the mortgage, and subsequent to the lien of Downer. It might extinguish the amount which he had paid in the purchase of that property, to wit: the three hundred dollars for which he had purchased the property on the judgment. It would be an absolute sale which would forever cut off any rights of Henry P. Hubbell, unless he could come in as an innocent party, without notice of these proceedings, and file a bill in equity to redeem.

But the allegation in the specification is, farther, that with this interest existing in him, the Judge on a certain day, confirmed the sale. That proceeding was of course, a mere matter of form. To this proceeding there was no resistance—there was nothing to pass upon; and the remarks I have just made upon the former specification, are equally true, and equally applicable here.—Here was no opposition—here were no merits to discuss—no controversy—no matter arising out of which, or by which, the mind of the Judge could be affected on account of his interest. The Statute, therefore, does not apply, and he had a right to entertain that proceeding and make those decrees.—But it has been contended by my associate, and I think with truth, that the decree of confirmation was an immaterial one, because not required by law. If then the Judge did make this decree, and it turns out to be immaterial, it certainly cannot be made a matter of impeachment.

And then, again, look at the small amount realized to Henry P. Hubbell by that sale. Here were the mortgage debt, and the lien of Mr. Downer, all expressed in the decree of sale, all recognized by the respondent, amounting to some $1000, and all of which were to be first paid out of the proceeds of the property. After Henry P. Hubbell became the purchaser, and after taking up these previous liens, it turns out that there was the sum of about $93 to apply in full satisfaction of that three hundred dollar judgment. Now this is, indeed, small! It is a small accusation to hurl at the defendant here, that, as a judge, he was swayed completely by his interest, to make decrees in the usual course of business, by which he was to realize the monstrous sum of $93, and had

to do that by raising the money to pay off previous incumbrances, to the amount of $1000.

Again, Messrs. Finch & Lynde, and Mr. Downer, I think, appeared and had interviews together. They were apprised of the interest of the respondent. They were apprised of the fact, that Henry P. Hubbell had bid off this property, and that he held it for the respondent. Now, these facts were well known to them. It did not occur to them that there was anything improper in the proceeding, or that the Judge had not a right to make the decree. Neither the jurisdiction, nor the proper exercise of the jurisdiction, seems to have been made a matter of question with them. They regarded every thing as all right. It was a matter of arrangement between them to apply the first proceeds of the sale to pay themselves. This was done with the sanction of the Judge.

Everything was in the usual form of business. The whole proceedings were in strict accordance with the practice of the Court, as well as with the rules of law; and when it is made a grave charge of corrupt conduct, or rather a crime or misdemeanor—a charge of doing an act which he was prohibited to do by statute, if he is to be punished for doing such an act in the ordinary course of his business, for the accommodation of suitors in his Court, by which they were to secure payment of debts to the amount of a thousand dollars, simply because he had a beneficial interest of a few dollars if the property could bring enough to pay it—then, indeed he is to be impeached for a trifling cause, because, indeed he has done a questionable act from the purest and best of motives, and not because he has done an illegal act with a corrupt heart!

In the last case I remark farther, that consent might have been fairly presumed—the consent which would authorize him to conduct this proceeding in strict accordance with the statute. How is consent given?—It need not be in writing under the law of 1850, which governed this proceeding.—Finch represented the interests of the complainant. Downer represented his own interest; H. P. Hubbell represented the interest of the respondent; and Judge Hubbell signed the decree. These are acts which denote consent, and on this position alone this charge may be safely rested.

AFTERNOON SESSION.

Mr. PRESIDENT: I almost regret that the very agreeable and spicy proceedings of the Senate should be interrupted with the dry matters that are involved before the same body as a court.

[The discussion of the Washington County division question had, previous to the sitting of the court, been affording the usual amount of amusement to the Senate.]

At the time of the adjournment I was about proceeding to the third article of the charges against the respondent, which is in relation to the conduct of the Judge in the case of the indictment against James M. Haney, for an assault with intent to murder. In regard to this matter I shall barely recapitulate the

positions upon which the respondent rests. In the first place, we contend that the indictment is not a good indictment under the thirty-fifth section of the act which has been read here, and which provides for the punishment by imprisonment of a person who shall be convicted of making an assault, being armed with a dangerous weapon, upon a person with intent to commit murder. We contend that that indictment, which has been so frequently read here, is not a good indictment at all, unless it may be for a common assault, or for an assault with intent to commit murder. In either of the latter cases, the proceedings of the court will not be questioned as having been perfectly proper. If it is a good indictment, as it was held by the court, and could justify conviction on assault with intent to commit murder, then the Jugde was authorized to pronounce the judgment, which he did pronounce. If it was an indictment good for a common assault, then it was in the power of the court to subject the accused to a fine. It was for the court to say, as a matter of legal construction, what the facts were which the jury found, in other words, what those facts constituted in law as a crime. This indictment charged the defendant with an assault, and charged that "then and there, being armed with a dangerous weapon, he discharged a pistol with intent to kill." Now it does not charge, that when he made the assault he made it "being armed with a dangerous weapon," and *non constat* that after he made the assault he was furnished with a pistol, or picked one up, and then discharged it with intent to kill. The indictment, in other words, does not follow the statute, and does not charge the fact—required to be charged, to obtain conviction under that section—that he was armed with a dangerous weapon at the time of making the assault.

In this connection the fact must not be forgotten that the defendant had the entire sympathy of the community; that it was the wish of all parties not only of the counsel on both sides, but of the public generally, which seems to have reached the ear of the court through Mr. Thompson, that, if possible, the penalty of imprisonment should be avoided. It will not be forgotten that it was a disputed question, what was the real crime with which the defendant was charged, and of which he was convicted; and that a motion in arrest of judgment was made, and argued with ability by the defendant's counsel. It will not be forgotten, also, that the jury which convicted the defendant at the same time recommended him to the mercy of the court. It is not pretended that any improper influence was brought to bear upon the respondent. It is a fact, that upon his conscience only, so far as the proof shows—upon his deliberate judgment, and upon the hearing of solemn argument, he did come to the conclusion to hold the indictment good for an assault with intent to kill, and that he had the right to satisfy the counsel, and the defendant, and the public, by imposing the penalty which he did.

I wish to say further, in regard to this charge, and in regard to several others which I have discussed, and which I may hereafter discuss, I wish to say now with regard to all of them, that they relate to the conduct of the respondent during his first term of office, which long ago expired, and that these various charges are not proper subjects for consideration in arriving at the judgment of the court, that legally, constitutionally, you cannot impeach the respondent for

conduct during that term of office which has expired. And that the argument is based not alone on the constitution of the United States, and the commentaries upon it, but mainly upon the express language of our own constitution, which prescribes but two judgments in every case—one, removal, the other removal with disqualification; that the necessary ingredients in either of these judgments is removal from office; and that, in case the Judge has already gone out of office, such a judgment would be inoperative and absurd.

I now proceed to article four, which is as follows:

"That he, the said Levi Hubbell, so being judge of the second judicial circuit has presided and adjudicated, as such judge, in the circuit and supreme courts of the state, in causes in the subject matter whereof he, the said Levi Hubbell, had been retained and counselled with as attorney, solicitor, and counsellor, by parties to such causes, and had acted as attorney, solicitor, and counsellor for such parties, contrary to the statute in such case made and provided, and to the manifest corruption and scandal of the administration of justice."

The first specification under this charge is, that he sat as judge in a cause in the supreme court of this state, in December '51 and June '52, wherein Howe and others were complainants, and Kane and Cogswell were defendants, where, in fact, he had previously been employed as counsel in another suit of Parsons and Lawrence against Cogswell, Church and several of the Messrs. Kane; which it is claimed, involved the same subject matter as the suit which was taken on appeal to the supreme court. This charge is founded upon the inhibition contained in the 20th section of the Act which has been so frequently referred to, and which I wish to read again with a view to some criticism upon it.

Sec. 20. "In case the judge of the circuit court shall be interested in any cause or causes pending in such court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said judge shall not have power to hear and determine such cause or causes, except by consent of the parties thereto; and upon motion, the said judge shall order a change of venue to an adjoining circuit, and the judge of said circuit shall hear and determine said cause or causes."

Now the language of the specification is—"That he, the said Levi Hubbell, at the December term, 1851, and the June term, 1852, of the supreme court of this State, did, contrary to law and justice, and his duty in the premises, preside and adjudicate as one of the judges of the said supreme court, in a certain cause in Chancery, pending by appeal in the said supreme court, wherein one Calvin W. Howe, and others were complainants, and one Charles I. Kane, who had been impleaded with one George Cogswell, was defendant, and did, as one of the judges of the said court, give his vote and influence in favor of the said Charles I. Kane, in the said cause; he, the said Levi Hubbell, having been the attorney, solicitor and counsel of the said Charles I. Kane, in the subject matter of the said cause, and in a former cause against the said Charles I. Kane, and George Cogswell, growing out of and involving the same facts."—I know not whether this was a shrewd and sagacious attempt to avoid the clear, palpable import of this section of the law, or not, but I do

hold, I do maintain here, that the specification is entirely futile; that it is not pertinent; that, in other words, it does not disclose upon its face any such conduct as is prohibited by this section; I hold that the cause in which he has acted as attorney, and the cause in which, for that reason, he is prohibited from sitting as Judge, is meant by the statute to be, one and the same cause. The language seems to me to be plain—that he is prohibited from sitting as a Judge in any cause in which he has been of counsel for the parties thereto—thus connecting the cause and the parties to the cause throughout; and that it must appear that the respondent was the counsel for Kane, or for one of the parties in the identical cause which came here to the supreme court; and he is not to be prohibited because he has been counsel in some other cause in which the same subject matter may have been involved, or to which some other persons may have been parties. If this prohibition goes so far as is contended on the other side, and as must be assumed to be true to give any pertinency or force to this specification, then the Judge is prohibited from sitting in any cause in which the parties have been parties to any other cause, or where others may have been parties to that proceeding. The legislature could have intended no such thing; for how numerous are the proceedings which are accruing constantly in our courts where suits are decided the subject matter of which may have been decided in one, or a dozen, preceding suits, and where perchance the same parties may have been interested, and for whom the Judge has been employed as counsel. I will not stop to illustrate this position in detail, for instances will occur to the mind of every man. Take any familiar case. We have in this state a charter for a railroad from Milwaukee to the Mississippi river. Suppose, before going upon the bench, the respondent had been concerned as counsel in one of the numerous suits instituted and growing out of the right of way, and compensation for it. Suppose now a suit comes into the supreme court, or had come before the old supreme court disbanded, involving that very matter of right of way. These suits have been of a somewhat complicated character. A great many questions of law have been raised, which have come up here, to the supreme court for decision. Does it disqualify a Judge from sitting, because he has been heretofore concerned as counsel? And yet they involve the same subject matter; for the same subject matter is involved in all of them. He may have been counsel for a man who owned a piece of land in Milwaukee county, and may afterwards be called upon as Judge to decide upon similar questions arising out of a case of land owned by the same person taken in Dane county. Is he to be prohibited from sitting as a Judge, because he has been employed as counsel in the former matter? The same "subject matter" in reality had been involved. There would be but little meaning in the prohibitions of official conduct if such a doctrine were to prevail. It would, in fact, operate to exclude every lawyer in large practice from a seat upon the bench. Many other instances occur to me, but I will not take up the time of the court to detail them. I think the language of this section was designed to cover only one case, and that is the case of a suit coming up before him as Judge, in which he had antecedently been employed as counsel for one of the parties. This disqualification is a matter of statute prohibition, and should be construed strictly, not to deprive the judicial officer of the exercise of his functions by loose conclusions and forced construction.

Now it is contended—to apply these principles to the case—that there is a manifest distinction between the Parsons & Lawrence and the Calvin W. Howe suits. One was a creditors bill, in the usual form, and the other a bill in which the complainant sought to set up a partnership between Kane and Cogswell, to vitiate a certain sale of goods from Cogswell to Kane, the legal title to which was in Kane. Now, it requires a considerable stretch of ingenuity, I think, to demonstrate, to the satisfaction of a logical mind, that the last suit embraced the subject matter of the first, even supposing the construction contended for on the other side, was the correct one.

Again, the parties were not the same. The latter suit was a suit of Howe and several other complainants against Kane and Cogswell, for a specific object—pursuing property in the hands of one on debts contracted by the other. The former was a creditors bill, based upon a judgment against Cogswell, and pursuing Cogswell, several Kanes, and Mr. Church, to obtain a disclosure of property in their hands belonging to Cogswell. Parsons & Lawrence were not parties to the second suit. That is not pretended. It is an answer, and I think a sufficient answer to the whole, that it was not the Parsons & Lawrence case, which was before the Supreme Court, and that the Judge was not of counsel in the Howe case. It is not pretended that the Judge was of counsel in that cause, at any period of its progress. Therefore, he had never been counsel in the cause which was pending before him. But, it is alleged he had been counsel in another proceeding, on the part of other parties, which cause was not before him in the Supreme Court. But we say still farther, that the whole allegation is answered by the proof, if you will believe it, that the Judge was not of counsel for Kane in either case. It is not pretended that he was counsel for him in the Howe case, and he certainly was not in the Parsons case. There is conflicting testimony upon this subject, but the weight of it, if you attach any weight to it at all, is decidedly in favor of the position which I take, that at no period was the respondent retained, or acting as counsel for Charles I. Kane. Mr. Cogswell proves some consultations. It is no proof that he drew the answer for Kane; besides, that is explained by the testimony of Kane, that it was done at the procurement of Cogswell, and the answer was brought to him by Cogswell, while Judge Chandler drew the answer of Cogswell, and it was signed by him as counsel. The best evidence of a retainer in a case of as much importance as that, is the payment of money, for professional services; and here it has been in testimony from Kane that he never paid Judge Hubbell one cent—that he never was presented by the Judge with a bill, and the Judge has offered to submit his books of account here, to show the fact that these charges were all made to Cogswell, and paid by him. On this proof, then, the main fact, which lies at the basis of this specification, is disposed of, to wit: that the Judge had been employed as counsel for Kane, in a previous proceedfng embracing the subject matter of the cause in the Supreme Court. But we say, it is not enough that the cause should embrace the same subject matter. If it embraced it in various degrees, if to the smallest extent, then, according to the argument of the other side, it amounts to a prohibition. It is not so, and cannot be so.

But again, at the time this case came up by appeal to the Supreme Court in 1851 and '52, when Judge Hubbell sat upon it, Cogswell had ceased to be

a party, I ask you, how you can account for it in nature, that the respondent had refused to sit previously, and then saw fit to take his seat. There is a cause for human conduct, as there is a cause for every thing. Why did the Judge do it? I tell you, it is creditable to his integrity, and even delicacy. Has there been any proof to show that he was bought up by Kane? that he was over-persuaded by him? that he had any earthly object whatever to accomplish? No! Why then did he sit upon it? It is reconcileable only with the idea that the Judge never had been counsel for him, but that he had been counsel for Cogswell. A decree had been taken against Cogswell, on which his interest in the property of Kane was ordered to be sold, and was, in point of fact, sold, as is here in proof.

Again, you have some other testimony upon the subject from Judge Whiton, who says, that Judge Hubbell did sit upon the bench, and says it was understood that he sat because Cogswell having ceased to be a party, he had a right to sit, he never having been counsel for Kane. Put all these circumstances together, and they demonstrate the fact, that he had been counsel for Cogswell alone, and that when he ceased to be a party, he saw no disqualification, and felt at liberty to sit in the cause. I have maintained in my argument that he could have sat at any time under a fair construction to be put upon the action of the law. But from motives of delicacy, because there might be doubt about the construction of this law, he declined to sit, and sent away the cause as long as George Cogswell was a party, and took it up again, and sat in the Supreme Court, when Cogswell had ceased to be a party, and when the matter was between the complainants and Kane alone.

The second specification is, that the Judge sat in the case of Hungerford against Cushing, in the Circuit Court of the county of Dane, and made a judicial decree, when, in fact, he had been retained, and did act as counsel for said Hungerford, and did act in the U. S. District Court, and that afterward he sat as judge in the Supreme Court, when the decree was made. I do not propose, as I stated in my opening argument, to dwell at any length upon the charges growing out of the celebrated case of Hungerford and Cushing. They have been most fully and ably presented to you by my associate. I thought, under the circumstances, he was more competent to do so, as he had been familiar with the case from its commencement, and not only with the case in chancery, but with the indictment for perjury. I think he has demonstrated to the satisfaction of the Court, that there is a total want of similarity between this chancery proceeding, and the indictment pending in the U. S. Court; and yet that allegation also is based upon this statute upon which I have been commenting. It is, that the subject matter of the bill in chancery had been involved in the indictment in which Judge Hubbell had been employed as counsel. Now, as a matter of fact, it is demonstrated that there was no similarity. But from the language of this specification, I do not know but it is intended on the other side to impute the charge of bribery—to raise an inference of corruption against the Judge, from the fact, that he had received a fifty-dollar fee from Hungerford, for acting in the proceeding in the U. S. Court, and that he was influenced by that fee. The language is studied and guarded; and it occurred to me that it might be made a matter for argument that he might have been swayed in his mind by the compensation he had received from Hungerford. It is that point alone to which I wish to allude, as

not having been considered by my associate. If that be the intention of the Hon. Managers, it will be asking this Court to infer corruption from a very far-fetched fact. In the first place there is no evidence of corruption, not even inferential.

It is in evidence not only that it was not the same case but that it did not embrace the same matter, and was a total different proceeding. Now they will be asking more than this court, I think, will be willing to grant, if they shall ask the court to infer that because he had received a retainer of $50, even if it did involve the subject matter of the last suit, that it operated as a bribe, or even as a corrupt influence in his mind on the decision of that case. Why, the idea is against human nature! The imputation would be so gross a one, upon any man who is fit to be a lawyer, or judge, or a respectable man in society as to preclude it for a moment! The Cushing suit involved property to the amount of $150,000. I suppose it was one of the most important suits ever submitted to the court, and can it be supposed that a retainer of $50, to give an opinion in his office upon a motion to quash that indictment, could influence his mind for a moment in the decision of the suit in chancery, pending before him as a judge of the supreme court? Because this accusation supposes a corrupt influence to exist, and to exist from that cause—the retainer he had received. The very smallness of the amount absolutely precludes the idea, because if he were susceptible to corrupt influences, who questions but the parties to that suit could have been reached by a larger retainer than fifty dollars. I think it would have overgone even the *two hundred dollars* that he got from Sanderson! If he could have opened his pockets to the reception of a bribe, and his mind to the reception of a corrupt influence, he could very well have filled his pockets, and need not have continued to be so poor as he is said to be now. He need not then have been impoverished upon a salary of fifteen hundred dollars a year. Upon an insinuation that he would decide the case for money, Hungerford could well afford to have given two, three, five or ten thousand dollars to get a favorable opinion in that suit. These circumstances utterly disrobe the matter of any just grounds for an impeachment of the integrity of the judge. I leave this matter, which has occupied a great deal of the time of the court, with the testimony which has been submitted and the very full and able argument of my colleague. As it occurs to my mind, however, I think I ought to say, as one of the counsel employed by General Cushing, and also in behalf of a friend known to me many years, that I cannot assent to the imputations which were cast upon his conduct by my associate. I leave it with simply expressing my dissent.

Judge HUBBELL. And mine too.

Mr. ARNOLD. And I will say for the Judge what he has said in my hearing, that the remarks of my colleague to which I allude were not made at his request.

The third specification relates to the divorce of William L. Hart from his wife. In the first place, I have to say in regard to that specification, that there is no proof of any petition pending in Rock county—one of the facts upon which this specification is grounded; but the material allegations of the specification are worthy of a moment's consideration. It is charged that the decree was improvidently granted. I suppose they really intend to sustain that paragraph of the specification upon the fact that it was granted in a proceeding in-

stituted for a divorce when Mrs. Hart, the defendant, was not in the state, and that the cause, from which the divorce suit had arisen, had occurred out of the state. I very well recollect the course of proceeding under the old territorial statutes in regard to divorce, and I very well recollect the conclusion to which the supreme court arrived upon the subject. But I do just as well recollect that in the practice of one of the territorial judges—and I had supposed of another, but certainly one—it was for many years customary to entertain petitions for divorce where the other party was out of the jurisdiction of the court, and where, even, the cause had arisen abroad. That was the invariable course pursued by Judge Miller, up to the fall of 1844, when, for the first time, he arrived at the conclusion that he had no jurisdiction, and a batch of petitions then pending were disposed of. That was the reason so many applications for divorce were presented about that time to the legislature. This is a fact in our political history—and that fact led to the engrafting on our present constitution a provision which prohibits legislative action on the subject of divorce. Nor can I see any want of correctness in the course that was first pursued. Look at the operation of the law. The marriage contract followed Hart when he left Ireland and came to this country. It followed him so as to entitle his wife, remaining abroad, to the right of dower in all the lands which he had acquired, and it has been in testimony here that the main object of the divorce was, to enable Hart to perfect titles to his lands, she refusing to come here and having deserted him, I say it follows him and secures her right in all the property he may acquire. Why then should it not follow him, likewise, to afford him relief in case of a violation of that contract by her? It should work equally. If she had violated the marriage contract in Ireland, where she saw fit to domicil herself, he should be entitled to some remedy growing out of it, as she would have, although he had taken up his domicil in the state of Wisconsin. And the practice now has been, under the constitution and laws of the state, since the present Judge went upon the bench in the second circuit, to entertain cases of a similar character. In Judge Howe's, Knowlton's and Jackson's circuits. Such also has been the course adopted, and, as you have heard asserted by Mr. Knowlton, that course has been sanctioned by the supreme court in a case where that point was directly involved.

But it is farther alleged under this specification that the Judge had been of counsel in a previous proceeding for a divorce between the same parties. Well, in regard to that, I say that the proof does not show any case pending in which the Judge had acted as counsel. It shows the petition to have been drawn by him and despatched to Judge Irvin, and enclosing a blank order for a time of hearing. That order, Judge Irvin, on the ground that he had not jurisdiction, for reason which I have just stated, declined to sign; and sent the papers back as he had received them. After Judge Hubbell came upon the bench, not being able to prosecute causes himself, he handed this one over to Albert Smith, who had recently arrived in Milwaukee, and who was said to be in want of business. He instituted a proceeding, drawing an entirely new petition, and stating different facts which he disclosed here as material, which were not in the petition drawn by Judge Hubbell, and which had been shown to him. In the first place there were no proceedings in the cause, for there cannot be a cause until it is entered in court—until parties appear before the court and give the court knowledge and jurisdiction. It is only in such a cause, under the section

I have read, that the Judge is precluded from hearing and determining the matter. Then I say as a demonstration, he was not precluded, because he had never been counsel in that cause, nor even in any cause embracing the same subject matter. That cause too had been abandoned—or rather that beginning of a cause—entirely abandoned. The Judge had ceased to be interested in it. He never had instituted the cause, and had been prohibited from instituting the cause, yet the allegation is made that he had been concerned as counsel in a previous cause.

Again, the circumstances in proof, in regard to this transaction, do not show any corrupt intention. On the contrary, they preclude the idea of any. He had no injury to inflict upon others in the decree which he could render; he had nothing to make for himself. He had no object, therefore, except to do the duty which the law devolved upon him. But it is said that he had been paid by Mr. Hart, for his services in the former proceeding. Well, I hope it was so, if he deserved any compensation, because I think lawyers ought to be paid. He acted as a lawyer as far as he went. He undertook to commence a suit for his client; if his client paid him it is all right. Yet there is some doubt about it, from the circumstances that no receipt could be found from Judge Hubbell, for the money, although receipts were found from all the parties in the suit which was actuallly commenced by Smith. Hart was a very careful man with his papers, and if such a receipt had existed they would have found it. But I care not for that. The proof shows that the old proceeding was closed up, and the Judge ceased having anything to do with it. At the time Smith undertook that case, what relations existed between them? Is it to be said that Judge Hubbell was to be precluded by this law from sitting on the bench in a case coming before him, because he had previously given advice to the parties—because he had been under a general retainer for him as his counsel? Why, if so, and the practice of Judge Hubbell had been extensive in Milwaukee, he never could have held a court there in which his clients were not interested, and had not previously consulted with him, and taken advice from him.

Again, I wish to say, in regard to this specification, that it is proven by the lowest species of evidence, and I make the remark here, because I wish to make it general, not only in connection with this specification, but with many others. That evidence is the recollection of witnesses after the lapse of a great deal of time. I mean to impute nothing to Mr. Smith, nothing whatever. His feeling of hostility, his enmity to the respondent, are apparent enough. He testified to that state of feeling, while on the stand. I do not mean to say that he was governed by that in his testimony, nor that it affected his memory, so as to make him swear to things which did not take place. Not at all; but that this is the lowest species of evidence that can be offered in a court, and should be received with many grains of allowance. For instance, I have never in my life seen an example of testimony showing so treacherous a memory as in the case of the witnesses Ingham, and Robert W. Wright. Asahel Finch, jr., showed the same thing in regard to one transaction, and other witnesses also in this case. They show how entirely treacherous the human memory may be. I had almost thought that from this time forth I would not trust, after the lapse of years, the memory of any man. How easy for Mr. Smith to have forgotten whether Judge Hubbell told him that Hart had

paid him for services in this case, or that Mr. Hart was a good man, was prompt pay, and that he would be safe as to his fees. It makes all the difference in the world as to the point of the thing. He says Judge Hubbell told him that Hart had paid him, and was good pay. I thought that was the understanding which the witness got of it, rather than the actual statement of the Judge.

The next specifications are five and six, which I will barely allude to together. These relate to the conduct of the Judge in sustaining the demurrer to two indictments against Kane for perjury, one of them having been decided at the May term '51, and the other at May term '52. The first was decided during his first term of office, the second during his present term. They are based upon the several suits of Parsons and Howe and others; and the same objection is raised to the right of the Judge to sit on those indictments, as in the case in the Supreme Court. In substance, it is the same, because he had been employed as counsel for Kane in the matters out of which the indictments grew. The same force of objection may be here taken to these specifications as was taken in the case of Hungerford. Kane denies that the Judge was ever retained by him; and, I think, the fact that Judge Hubbell had ever been employed as counsel in these proceedings is not established, and it is admitted that he never had been employed in the case of Howe. But the ground then is, that the suit involved the subject matter which was involved in the indictment for perjury; and to say that he was employed for Kane in the suit of Parsons & Lawrence is pretty far-fetched to be sure. But, I say, in regard to both of these cases, that, so far as sitting as a judge to try them is concerned, as it seems to me, the objection is entirely removed—not from the fact that the learned counsel on the other side appeared as counsel for Kane, and gained his point, but because the consent of the parties may be fairly presumed from their conduct. They both appeared there—the State represented by the District Attorney, and the defendant represented by the learned counsel and myself. We raised no objection to his right to act, nor did the public; and, having thus assented to it, it seems to me, the objection is removed, even if it otherwise had any force, which I think it did not. The consent is strongly to be presumed, from the fact that Judge Chandler was concerned with the District Attorney, and was well acquainted with the proceedings in the Parsons case. Yet it was never dreamed of by him, nor by the District Attorney, nor by Mr. Ryan, nor by myself, and, I believe, it has never been pretended, that the Judge did not act conscientiously and honestly. It has never been charged that he was governed by any improper influence, or any desire to do any thing but his duty.

Article 5 relates to receiving of moneys into court, and taken by him and using the same. I shall pass that article. It embraces two specifications only. I shall pass it by, simply calling the attention of the Court to the evidence. I shall only say that I am surprised to learn that they are relied upon. The circumstances have been fully disclosed by the testimony. Taking the testimony of Mr. McArthur in regard to the first of these specifications, and the testimony of Collins, Smith, and Mr. Vilas himself, and Mr. Burdick, in regard to the second specification, there is not room left for suspicion against the good intention of the Judge in these matters. It is in proof that, in the first instance, the thing with which he is charged, he did for the accommodation of parties out

of court, when there was no court in session. It is also in testimony, that the money was returned when it should have been repaid. In the other case, it was done for the accommodation of the parties. All parties consented to it, and considered it at the time all right. The Judge himself hurrying on the case, feeling annoyed himself, because it must go over to another term. It was disposed of as soon as it could be; and the Judge immediately sat down and paid to Mr. Collins, by his clerk, the money which had come into his hands; and the testimony shows that he was always ready to do it, and that he had the money in his hands up to the time it was paid.

We come now to the first specification of Article 6, in regard to the conduct of the Judge in a certain cause in chancery, instituted on behalf of the State against the Wisconsin Marine & Fire Insurance Company, and in the matter of an application for an injunction against that company. I dwelt so fully upon that specification in my opening, that I do not propose to dwell at any length upon it now. I insisted then, and shall now, that the conduct of the Judge was not only unquestionable, but that it contrasted most favorably with the conduct of the counsel who were employed. The Court will recollect that when an injunction was expected at the hands of Judge Larrabee, after it had been refused by the respondent, Mr. Mitchell's counsel advised him to disobey the injunction, on the ground, among other things, that Judge Larrabee had no jurisdiction. On conversing with the respondent, Mr. Mitchell was advised to take no such course, but to apply for a dissolution. Then arose the controversy about the difficulty of obeying the injunction, because the Judge was going off to Madison. It was urged that the closing of the doors of the bank might create a panic whereby the public might suffer. Hence it was that the Judge, for the benefit of the public, consented that, in case an injunction was allowed, he would instantly return from Madison as rapidly as he could, with a view of hearing a motion to dissolve the injunction. He made no promise that he would dissolve it; but Mitchell inferred that he would, from the fact that he had intimated that Judge Larrabee had not jurisdiction, and from the fact of his having refused the injunction once himself. It was a very natural inference that he would dissolve it when it should pe presented to him. The action of the Judge in the matter was certainly morally commendable, as well as legally justifiable. The injunction was refused by him until the motion could be heard, upon notice and strict conformity to the rules of our court, unless in cases of emergency. The Judge said, in his written answer refusing the injunction, that if he was satisfied that the institution was acting fraudulently, or was intending to remove its assets out of the state, then he would grant the injunction. There was a necessity of the rule of the Court being complied with; and why should he have been asked to grant an injunction without a compliance with that rule, unless it was sought to be surreptitiously obtained over the law and over the rules of the court, to give a weapon against that institution, by which they should be able to cut its throat, and put money in their own pockets. The Judge thwarted them, and in doing so, he acted legally and wisely. There was no danger impending to the public, and no reason to apprehend any danger; and if the safety of the public was better secured, by refusing the injunction, than by granting it and creating a panic, which would have operated only to enrich those who were pursuing it, it was proper that he should adopt that course. He seems to have had the public

interest in view in his first conduct, as well as the rules of his court; and also, in the last promise, which he made to Mitchell, of a speedy return to Milwaukee, if an injunction should be granted. Mitchell unequivocally testifies that there was no promise of a decision, although he inferred what it would be. He testifies that there was no improper motive brought to bear on the Judge—that no money was paid him, no accommodation offered him, and none ever extended to him on account of his conduct at that period, or at any other.

The second specification is in regard to the suit of Lowry against Greves and Wright, in which the Judge entertained an interview with Dr. Greves, and advised him that the judgment in the suit was scandalously obtained, that he ought to make a motion to vacate it, and that on that advice Dr. Greves did make such a motion. Well, I do not think that this specification is worthy of notice. The Doctor has explained the way in which it came up. It was a public conversation. Several persons were present. It was an occasion just preceding the judicial election. His story was told for the purpose of explaining to the Judge the reason why he should not vote for the opposing candidate. He narrated the circumstances of this judgment rendered against him in a suit in which Finch had been counsel for the plaintiff, and in reference to which, as a friend, Finch had made arrangements and promises which he had violated. Then, it was, the Judge did express an opinion about it, and upon Dr. Greves inquiring whom he could get to draw an affidavit to set aside the judgment—expressing his fears that his own counsel would favor Finch—the Judge said that Mr. Ryan and Mr. Watkins were not open to that objection, were not particularly friendly to him, and would be proper persons to draw an affidavit. Accordingly he did go to Mr. Ryan, who drew an affidavit, setting forth the facts at great length, and holding up Finch in no very enviable attitude before the public. That affidavit was allowed to be used in the public press in Milwaukee, against Finch, as being an improper person for Judge. This was a public conversation, and there was no promise given it, to make any decision whatever. I wonder they had not called it an "indecent interview!" It was an interview in which there were several parties, and in a casual conversation which transpired. What became of the motion to vacate, whether it was granted or not, does not appear. I believe Brother Finch has stated that that affidavit was untrue. Why it was presented here and put into the face of Mr. Finch, I neither know nor care.

The fourth case relates to the divorce proceeding of Burr S. Craft. The impropriety charged in this specification is an interview with Mr. Elmore in which the grievances of Mr. Craft were stated, and followed by inquiries as to whether he could get a divorce, and it was suggested by the Judge that a divorce could be obtained, if the statements he made were facts. Thereupon proof of the facts was taken and submitted to the Judge, and the decree was granted. But a farther impropriety charged is, not only that conversation at Waukesha, in which Elmore, the Judge, myself and others were parties, but the fact that when the evidence was received it was opened and examined by the Judge, and the question was asked him whether it was sufficient, without taking farther testimony, and the Judge, after good-naturedly and playfully submitting it to his wife for her decision, took it in hand as he was bound to do, and stated to Mr. Elmore that if the facts there were not controverted he need not go up to Appleton to get farther testimony. Now, was there anything improper in that?

Why was it improper?' We will dismiss the playful matter about the proofs being submitted to his wife. That amounts to nothing. I presume, also, he did not really intend anything by his remark about the gold ring—a remark which made so little impression upon Mr. Elmore's mind, that he did not even communicate it to Craft. The Judge had a legal right to open the testimony. It would become his duty at some time to say whether it was adequate or inadequate. The evidence was taken in public, and every body could inspect it. I think his answer was a guarded one—"You need not put yourself to the trouble, if your testimony is true, to go for farther evidence."

Again, to preclude any imputation upon the conduct of the Judge, it is apparent that if the allegations in that bill of divorce are true, and the testimony be true the divorce was unavoidable.

There is another point in that testimony of Elmore's. I think he stated that Craft said he was to give me a hundred dollars for procuring his divorce, and that he believed the Judge was to have half the money. I know the report was very current during the session of the legislature that they had found a mare's nest in this transaction—that the Judge had been directly bought up because I had received a hundred dollars for procuring that divorce, one half of which I had paid over to the respondent at the bar. I well recollect being surprised on meeting the Judge one day and his accosting me and saying he "wished I would pay over that money." After plaguing me some time, he told me what he alluded to, he having heard of it before I had. There being no opposition to the divorce, Elmore maintained that the charge of $100 was too much. I thought so too, and compromised with him for $50. He gave me a check on Blossom, which I presented—took the money, and spent it as usual.

I now proceed to the seventh article. The first specification alludes to a cause in chancery, pending in his court, wherein the Judge, on application by Byron Kilbourn, refused to hold a special term to confirm a chancery sale; and afterwards, on an application from one Amos Sawyer, he consented to do so on being told the importance of it, and that it would be a personal accommodation and benefit to Col. Sawyer to have it done. I suppose it would be a waste of time to dwell upon this specification. There was no impropriety, even, in it, to say nothing of corrupt conduct in office. It was an accommodation of an individual, asked to be granted in the night. He refused the application of Kilbourn on that ground, and he had a right to do so. He was not bound to leave his house at night, go to the court house and make a decree to suit the pleasure of an open and known enemy. When that decree was afterwards desired by Mr. Sawyer, then the Judge assented to holding court for the purpose of making it, although it appears in proof that he did not do it even the next day. Here was but an exercise of judicial pleasure—judicial accommodation, in matters where he was under no legal obligation, and of course it can be made no matter of charge against him. It is in farther proof that he was at the court house every day at ten o'clock, for the express purpose of holding special terms, and making decrees in chancery proceedings. I think it about the last complaint that ought to be alleged against Judge Hubbell, that he has not shown a spirit of accommodation in the performance of his official duties. He has been diligent, laborious in season and out of season, to accommodate suitors, not only in court but at his rooms and in the offices of lawyers. This is true, and known to be so by every member practising at his bar.

I now go to the second specification—the interview of Mrs. Howe with him in relation to the indictment of her husband. I propose briefly to consider this specification. On this subject the witnesses have been Mr. Finch and Mrs. Howe. Now the testimony of Mr. Finch, without repeating it in detail, adds nothing whatever in proof to this specification. I dwell on this because my associate overlooked it. The gist of this specification is, not having an indecent interview with Mrs. Howe, but that, having such indecent interview, she solicited him on behalf of her husband to quash the indictment against him for perjury, and that he yielded, and did bring about the acquittal of the defendant. Now, the testimony of Finch shows no solicitation on her part about that indictment. It shows not one word that transpired in the interview, which he ascertained, between the respondent and Mrs. Howe. He went to the room, knocked, opened the door, and saw Mrs. Howe sitting in the room, and Judge Hubbell was approaching the door. He was invited by the Judge to walk in, and told that there was nothing private going on. He bowed himself out, and retired, and this is the substance of Mr. Finch's testimony. What does it prove in the case? It does not prove a particle of solicitation—it does not prove a word of conversation between him and Mrs. Howe, nor does it furnish a particle of proof of any indecency in the interview, unless, perchance, in the village of Waukesha, in a public house kept there, for the respondent and Mrs. Howe to meet together to talk in a room then occupied by a lawyer practising at the bar, be an indecency! I say, the point of the charge is not the indecent interview, for the reason, that what transpired at that interview, and what the conduct of the Judge was growing out of it, is the main allegation of the specification.

Now, from Mrs. Howe you have an account of the transaction, full and in detail, and which not only acquits her of any imputation of an indecent interview, and the Judge also, but shows that there were no solicitations in regard to that indictment, nor in regard to any matters connected therewith. She shows, also, how treacherous had been the memory of Mr Finch, who did testify that that indictment was then pending, and that it was heard and tried at that term of the court. She testifies that that interview was sought in fact to apprise the Judge of an error, made by him in charging the jury, in the case of Simpson against Howe, and that, upon the instruction from the court that they should take the note in the suit just as it was and pass upon it; the jury had passed upon it, and had disallowed an endorsement of $40, which had a mark run through it. Her husband had refused to see the Judge upon the subject. He had been an opponent of the Judge, and so for that matter had she; but she insisted upon going, and he assented. The house, at that time, was well filled with guests; the rooms were all occupied; there was but one parlor in the house, and that was occupied by the family, and was, in fact, a nursery. Being acquainted with Mr. Holliday, she applied to him to arrange the interview, and told him the object. He said he would see to it. He then told her she had better not go into the public parlor, as she would be constantly interrupted in the conversation, and that she had better go into his room, and he would ask the Judge, who occupied the next room, to step in, and they could there have the conversation. She sought the interview herself, for this express purpose, and none other. She did go there, did talk to the Judge, and in all respects the interview was most decent, and in no wise discreditable either

to him or to her. She stated to him her object; she explained the mistake in relation to the endorsement upon the note. She desired to call his attention to it, because the endorsement had been made according to his instance and advice before he was a judge. It seems that Simpson owed a debt at Byron's, which he had secured by depositing a note which he held against Howe as collateral security. Howe made a payment to Byron upon his note while it was thus deposited in his hands, which payment was endorsed upon the note and passed to the credit of Simpson. The note afterward fell back into the hands of Simpson upon the payment of his debt to Byron, and he struck out the endorsement of the payment which Howe had made to Byron. On the subject matter of the interview, the Judge told Mrs. Howe that, if the facts could be proved, as stated by her, he would have to grant a new trial, and, upon the proof of them subsequently a new trial was granted. It is farther in testimony that the interview lasted only a few minutes. It was at a public house, and if I had been a witness myself I should have shown that it was known in the house—known to the family—in fact to the young daughters of Jones himself. There was no secret about it at the time, and nothing designed to be secret. It lasted but a few moments, and brief as it was, was interrupted by Finch. To be sure Mrs. Howe gives a different account of it from Mr. Finch. He omitted that part of it which related to those peculiar attitudes and expressions of his as he so gracefully retired from the room. Now this is a charge of, and this testimony is claimed to be proof of, an indecent interview. If so, what was the testimony? Where is it? What witness has sworn to it? And yet here is the ear-mark which admonishes me that that charge is relied upon. Mrs. Howe shows that the interview was, not only not indecent, but that the indictment, about which she is alleged to have had the interview, was not even then pending; and the whole specification is simply a falsehood—an absurdity. She testifies that the indictment was not even then pending; and was unknown to her. They went, on the next day, from Waukesha to Milwaukee, and, on their return, her husband was arrested and gave bail, and she never thought of, or knew of, the indictment before that. So then the whole specification falls to the ground at once; and as to any interference of the Judge to bring about the acquittal, as having been the consequence of her solicitations, there is not a particle of proof either of her solicitations, or of the interference of the Judge after her solicitations. The court will bear that in mind. The record has been here, and it shows her testimony all right. It shows that a jury was empannelled in the ordinary way; that the trial proceeded, and that the jury gave a verdict of acquittal.

But I am justified in one further remark. What proof is there here for even an imputation that this was an indecent interview? The gentleman undertook to extort from Mrs. Howe some admission, some fact in regard to it, which probably might authorize him, in a speech, which must be misapplied, so far as this specification is concerned, to stigmatize her conduct, or perhaps to be able to throw out something against the character of the other party to that interview; something, perhaps, on which to hang a few remarks, that would operate to cast disgrace or ridicule upon him. In that he failed, if that was his object. He drew out the statement, that while standing, after having sat in a chair, and just before leaving, the Judge playfully put his arm upon her, and said, "What a small woman you are." Then the gentleman, I

suppose, thought he had succeeded. And so he asked her—"Mrs. Howe, did you not consider that an indecent proposition?" "No, sir, I did not!" "Why not?"—"Because I stated to the Judge, that I had come there to see him on business, and that I hoped he would treat me gentlemanly. He immediately desisted, and withdrew his arm. I therefore attached no importance to it." "Why, then, did you think it necessary to tell him to desist?"—"As a guard against any thing further." "But why did you think it necessary to guard against anything further?"—And her answer was the best I ever heard in a court of justice in my life. It was in the simple words—"Human nature!" And then the gentleman dropped the subject! I ask them if, on this evidence, it is to be imputed to either her or the respondent, that there was an indecent interview. I suppose it is not necessarily such. At any rate, I suppose that any interview between a man and a woman is not necessarily an indecent one, even although they may not be man and wife. It must depend on the time, the occasion, and all the surrounding circumstances that may be proven to exist. I apprehend that it may not be said, that a man laying his hand playfully upon a lady acquaintance, and remarking—"how small you are," would make that an indecent interview, or that it would be regarded by any well-educated lady as an indecent attack upon her, or to be resented as such; it might justify the remark made by Mrs. Howe, and that would be the last that would be thought of it.

The third specification relates to the case of Wyman, and the divorce granted to his wife. There are several statements in this specification. The first is, that the Judge permitted Wyman to have an interview with him, and exhibit certain affidavits in support of his application for a divorce; that he told Wyman these grounds did not well support it—that his wife, he understood, was about to apply for a divorce, and that would answer his purpose just as well. Then follows the statement of an indecent interview with Mrs. Wyman, and his counselling with her in relation to a divorce. Then, it is charged that by collusion and favor, the Judge did grant the divorce. That is the substance of the specification. Now, in regard to the interview with Wyman, it is hardly worth while to dwell a moment. He finds it difficult to remember anything about it, and it is difficult to extract any idea from his testimony. But he did have an interview, and did have some papers as is supposed. There is no dispute that papers had been drawn, and were exhibited to the Judge, who did declare them insufficient. There is no dispute about another fact, that Mrs. Wyman did on her part contemplate a divorce. There is no doubt about another fact, that her friend, Mr. Seymour, after leaving her husband, solicited from the Judge the pleasure of seeing him at his house, without informing him on what business, or for what object he wished him to go. There is no doubt that the Judge did call in pursuance after appointment, and that he did see Mrs. Wyman, and Seymour, and Mr. and Mrs. Atwood. These facts are in evidence, but how far do they tend to show the private and indecent interview, and to show the charge of his counselling and advising with her on the subject of her divorce. I ought not to waste a moment in talking about it. These three or four respectable ladies and gentlemen have been before you as witnesses, and detailed the whole of that transaction. I understand that the other witness, whose memory was so remarkably "shaken," was *the* witness before the committee; and upon his testimony alone, this infamous specification has been got-

ten up and published to the world. That man, who remembered nothing, took back everything he said before the committee, excepting that he did acknowledge that he sat up there, like a thief in the night, watching from curiosity to see what was going on, and that he continued until his usual time of "turning in," when sleep got the advantage of curiosity, and he retired from the field. Neither of these other parties, although living here in Madison, were summoned before the committee, although they must have had good reason to believe that they knew something about the matter. The committee must have known that of their own knowledge upon the subject. They must have known it, or else they did not question Ingham very thoroughly. They must have known that these other parties who were present knew the facts, but not one of them was brought before the committee, and they have thrown out this specification without proof and without making proof. There was no indecency in the interview. The Judge was annoyed when he found out why he was invited. He was asked the question about the divorce. He replied that a lawyer could answer better than he could, and he referred them to Mr. Collins. A conversation ensued in regard to whether a divorce could be granted in private proceedings instead of public; whether there needed to be the exposure of a public trial. These questions were asked by Messrs. Atwood and Seymour, with a view to operate upon her mind, because she had not yet quite decided to apply for a divorce. The interview continued for but a few minutes. Mr. and Mrs. Atwood and Seymour were in the room all the time, and Mrs. Wyman was undressed, sick and in bed. Seymour received him at the door, ushered him into the room up stairs, and was there all the time, except for a moment when he left the room to go down, as Mr. and Mrs. Atwood entered. They remained there all the time till the interview closed, and then Seymour went with the respondent to his hotel. These are the facts testified to by respectable witnesses; and on this testimony how can it be apprehended that there was anything of a private or indecent nature in that interview, which did *not* take place between the respondent and Mrs. Wyman, but between Atwood and Seymour, and Mrs. Atwood, in the presence of Mrs. Wyman.

But it is charged again that this decree was contrary to law. Well, I do not know the facts of that case particularly. I have not pursued the case to see how strict a conformity to the law was required. I do not propose to try over again these various cases. If we were to do so, it would occupy more time than the Senate would be willing to devote. I rather guess from what has been dropped, they intend to rely on the point that the cause was brought in Milwaukee county instead of Dane. On this subject you have before you the statute. This was under the territorial statute, which was in force at the time. These questions of law, whether or not the suit could be brought in the county of Milwaukee, I do not care to consider. Supposing it to be true, and well made out, it does not at all sustain the main charge, that it was a matter of collusion and favor on the part of the Judge by whom the decree was granted. But as that may be made a matter of discussion, I allude to it. The language of the act is this:

"That all applications for divorce may be made to the district court of any county in the territory," &c., &c.

That is the broad general provision of the law, and under it you have the

testimony of the lawyers, that the practice was to file petitions at random in any county in the then Territory of Wisconsin. It was the practice of the Judges, and the proof of that precludes the idea of any intentional violation of law; for this prosecution must show not only a violation of law, but that it was wickedly and corruptly done. In this case, however, he was justified by the practice, and by the plain letter of the law. Again, as I said, this does not tend to corroborate the charge of collusion or favor; and then the idea of collusion or corruption, on the part of the Judge, is entirely set at nought by the testimony of Abbott, Botkin and Collins. They were the counsel employed, the one representing Wyman and the others his wife. They all testified that they never heard of any collusion or arrangement between Wyman and his wife, except the arrangement in the subject of alimony. That is an incidental matter, and not a matter of the decree. It is only an incident to the decree, and nothing is more common, as every lawyer knows, than that a matter of alimony may be arranged out of doors. After the decree has been granted they can arrange it among themselves, then the Judge may incorporate it into the decree, or omit to notice it all, as was done in this case. If this be a just cause of impeachment, then all the Judges of the Territory and the State are subject to impeachment.

There is not a particle of proof that Wyman assented to or connived at this divorce of his wife, or made any arrangements concerning it. He simply instructed his lawyer that if no proof was taken to the injury of his character, or than what was ordinarily taken to sustain the allegations of the bill, he was not to resist, but if any attempt was made to furnish any proof of an infamous character, then he was to resist it. These were his instructions, and this precludes the idea of any collusion, or of any assent to the divorce. He had made up his mind to resist only in case the proofs tended to injure him, or render him infamous. The only matters talked of were these two; first, the question of alimony, which reached his pocket, and secondly, the matter about which he was so careful to ask, whether divorcing her would divorce him. I asked him, why he inquired of the Judge the effect upon him of a divorce obtained by his wife? He said, he had heard in some states a divorce of the wife did n't leave the husband at liberty to marry again. These were the two matters that particularly concerned Wyman—his ability to obtain another victim, and his ability to get rid of the present one at as little expense as possible.

The fourth specification is in regard to the case of Robert Barker and Geo. C. Pratt, in Waukesha, in which the Judge is charged with making an order to stay a writ of execution on a judgment, because it was inconvenient and difficult for the defendant then to pay the judgment. It is not worth while for me to dwell on that. I will add one circumstance to the argument of my associate. There was a difference in the exemplifications of the judgment in Vermont. There was enough difference to raise suspicion of fraud or mistake, but there was another good reason why the order was properly made, and that was, that Pratt was not a party in appearance there at the time of the rendition of the judgment in Vermont. Pratt left the country, and auditors were appointed. He instructed his counsel not to appear. The duty of the auditors was to state and settle the accounts between the parties. The other party, the defendant, presented his account, and after he had done that he then presented what was said to be the account of Pratt. The auditors took it as it was ac-

count, and struck the balance. Now, the simple fact that the Judge was informed of all this, justified him in staying any execution upon the judgment to enable Pratt to correct the wrong done him by the proceedings in the State of Vermont. It was then heard and determined, and I suppose by this time a decision must have been announced. The order was made by the Judge at the time of giving judgment, and continued at the next term, for the same reasons which originally induced him to make it. Downer then commenced proceedings in the U. S. Court; and upon a statement of the case, and for the same reasons, Judge Miller made the same decision, and yesterday morning, in this Capital, he renewed the order, being informed that the matter had been heard in Vermont, but that the decision had not yet reached him.

I will not stop to comment on the seventh and eighth specifications under this article. The seventh is the replevin suit, the charge of which was in regard to an admission made by Mr. Watkins, who was attorney for the plaintiff in the case. It was of very little consequence. In connection with that admission, the Judge is accused of having said—"I can't permit you to make that admission, Mr. Watkins." The language is differently given by the different witnesses, and the time at which it occurred in the progress of the case. But Mr. Watkins did persist in the admission, and maintained that the plaintiff must recover any how. But whatever this remark was—and I judge Mr. Watkins version to be the correct one, and I think it unnatural as stated by Messrs. Orton and Chandler—but, such as it was, it may have been to the effect that if he made that admission it would be fatal to his case. But, for one, I am not willing to admit that, if this practice was common, it would be objectionable. I believe the better course of practice is to get the full merits of the case before the court, and have a fair and candid investigation; and I think the Judge who helps the matter along and aids in getting it fairly before the court and jury upon merits instead of technicalities, is best discharging his duty. And if a lawyer has made thoughtlessly, for a moment—whether a good or a poor lawyer—a statement that would be fatal to his case, I do not know that a Judge is to be blamed if he throws out the intimation.

The eighth specification relates to the Judge's refusal to Mr. Cushing's solicitor, in the Hungerford and Cushing case, sufficient time for argument. That has been handled so thoroughly by my associate, that I will pass it entirely by.

Now the eighth article embraces various specifications to support the charge that the Judge "has used his judicial station and influence for the purpose of inducing females to submit themselves to be debauched by him, &c."

I only call the attention of the Court to this charge, in passing, for one reason. I am entirely surprised to find that counsel does still insist upon this charge; and that in the two cases of Mrs. Howe and Mrs. Pope, the allegations are made out. I confess myself amazed at this conduct on the part of the prosecution. Are they so hard run for something to rely upon that they are compelled to still insist on these infamous charges, and these miserable specifications, for the purpose, not of convicting the respondent—for that is beyond their hope—upon this charge, but for the purpose of having something to say that may wound his feelings, and that may be put upon the records to go forth to the world, and blacken and libel him. That is the object; for every member of this Court knows full well that there is not a particle of proof here to sustain for one moment, even one of these accusations. I have just called the

attention of the Court to the case of Mrs. Howe; and, in the case of Mrs. Pope, there is still less of proof. The very frank conversation the Judge had with Mr. Randall, in the presence of others, of itself precludes the idea of any improper interview between these parties, or that he used his office for any such purpose as is charged. Why, what can be the object of insisting upon it, unless it be such as I have just intimated? Sir, I am surprised to see it. I do think they have inflicted upon the respondent injury enough of that kind, by bringing these charges before this Court at all, and by spreading them before the world, upon the credit of the Hon. Assembly, indicating thereby that there has been proof sufficient to establish a basis for the charge. And when they have utterly failed to substantiate it, one would suppose that they might in magnanimity, if not in honor and duty, pass them by and say—"Not proven." It is a rule of law in an action for libel, if a defendant comes in and spreads a justification upon the record, he aggravates the libel by repeating it if he fails to prove it; and, I say, in this case, as they know full well, by making the specifications public, they have added insult to injury, and now by reiterating them by the marks they have put upon these charges, showing that they intend to urge them to this Court, they aggravate the libel.

I now pass to the ninth article, for I must not detain the court much longer. There is no proof, I have generally to say, in regard to the specifications under this charge, of any oppressive conduct on the part of the Judge, or arbitrary exercise of power, nor of his acting out of favor, or enmity, either corruptly or not corruptly. I mean to say, broadly, that there is nothing in the proof under any of these specifications—and I appeal to the court's recollection of the testimony—which shows any deviation from the correct, justifiable, straightforward path of duty. There is no proof of any arbitrary or wilful exercise of power; in other words, there is nothing which shows any corrupt conduct in any act set forth in these specifications.

The tenth article charges that the Judge allowed himself to be improperly approached and advised with by suitors in his courts.

The eleventh article charges that he officiously interfered with, and advised upon, the subject matter of suits in his courts. I have to say, generally, in regard to all these charges, that all the specifications in these last two articles, are based upon conversations with different persons, frequently not parties to the suits, and upon interviews not sought by the Judge, and that there is nothing improper shown in any single one of them. They are all incidental conversations, such as would naturally arise between him and his friends who might seek interviews and conversations with him about matters in his court, or that were going into his court. There is no proof that he ever sought or gave advice, or announced that he would make any decision, or promised what his conduct would be upon the bench. There is no motive shown of corruption—nothing beyond casual remarks, that would make up an ordinary conversation. Now, that being true, as it is, will the gentleman say that these conversations, of themselves, thus stripped, as they are, of anything wrong or suspicious or that indicates corruption, are evidences of impropriety, and for that reason are impeachable? Is that the argument? If so, what is the rule? Must a man, because he is a Judge upon the bench, be precluded from conversations with his fellow men? Is he, by the bare act of taking his seat upon the bench, isolated from the community? Are his lips forbidden to speak? Is

he to be no longer a man, with feelings and sympathies like others? Is he to become like marble, totally unimpressible? Is he not to be talked with? Is he to be deprived of his natural sympathies, or deprived of his humanity, because he takes a Judge's seat?

This cannot be the rule. Then you can lay down no rule, for we are not all alike. One man is frank and open—desirous of conversation, and cannot live without it. Another man is of a different nature—cold, phlegmatic, and does not wish to talk. Such a man will say less than the man of a more social nature. There is no rule that can be laid down. The only point is, not whether he talked less or more than some other Judge, but has he talked improperly? Has he made promises? Has he held out inducements that indicated a corrupt mind as a Judge? Is there any proof of any conversation of that character? If not, then these charges are answered.

And now I say, generally, in regard to all these cases, that there is not in proof any promise made by the Judge of what his decision would be in any given matter. These are material points, which I deduce from the whole proof. I again say, there is no proof of any wrong, or any accommodation, or any valuable thing, whatever, received by him for any decision by him made, or to be made. I say, again, there is no proof of any improper influence exercised upon him, by any suitor or party in his court, or other person, in the discharge of his judicial functions. I say, again, that there is no proof that in his numerous charges to juries he has wilfully charged them wrong—an important point as it occurs to us, as the most of cases go off through the instrumentality of juries, and a Judge can, if he chooses, exercise extreme power over their deliberations and verdicts. The prosecutors have had access to all these cases. The community could have informed them of all jury trials before Judge Hubbell, numerous and important as they have been; and if he had been corrupt, or improperly influenced, or made himself an instrument to pervert or abuse the law, they might have shown it in his charges to them by abundant proof. Yet there is not a particle of proof here to show any cases of charges to juries when he manifested any other than a proper feeling, and a correct discharge of duty. And I say, that fact itself is a vindication—and a triumphant one, too—of his administration of the law.

I say, again, that the parties and suitors in his court have never complained. No instance of appeal, or writ of error, upon his decrees or judgments, has been given in evidence, where there has been a reversal, except, perhaps in the case of Cushing. Of all the parties who have been before him, and who alone would be the sufferers by his corrupt conduct, by his maladministration of his office, or by crimes and misdemeanors, not one of them has raised hand or voice against him. How happens it, that, if this respondent has been for years the wicked and corrupt judge, the villian and the criminal that he has been charged to be, the parties who alone could have been affected by this array of charges of corrupt conduct in his judicial capacity, have never appeared against him—have never sought to attack him—have never sought even to reverse his judgments?

A few general remarks now in conclusion, and I shall submit this case. I have said before, and I say now, that the conduct of the judge, so far as indiscretions and improprieties charged against him are concerned, of which the

great mass of the last three articles consist, may be partially accounted for from the very nature of the elective system of the judiciary. It does, as I have said before, create a new feature in the judicial tenure. It is a blow aimed at the independence of the judges, because it makes them responsible directly to the people. How natural for a man thus responsible, to desire to be popular in office—to conciliate all parties—to conciliate the community, not wholly, perhaps with a view to the right, but with a view to re-election. That may account partially for the freedom with which the respondent at the bar has conversed with the people of his circuit, and circulated so freely among them.

But I will be answered on this subject, perhaps, by being told that this elective system is an experiment, that it must be watched and guarded, and that lest abuses shall grow up under it, an example ought to be made which shall deter all others. In the first place, you must find the respondent guilty; but, in the next place, if an example must be made of some one, just, if you please, don't take the defendant! Take any one else, but spare him! That is the old argument in murder cases; it is necessary that some must be hanged for murder. I suppose it is very proper in those cases to reply, don't take me, but take somebody else. But again, these improprieties and indiscretions, if such they be deemed, though they are in a great degree to be attributed to an elective judiciary, are in a greater degree to be attributed to the natural character of the respondent. He is known personally to most of you, if not to all of you, as a man of frank, generous nature, and social with all his fellows. These are prominent traits in the character of the respondent, and it is the sum total of these that makes the man, and defines any peculiarity that may be about him. These are the characteristics of the respondent. They lead them to be polite in his intercourse with his fellow men, and to be anxious to serve and please them. They make him sensitive about avoiding them, sensitive about setting them at bay. They render it difficult for him to put himself upon his dignity, and say—"Sir, I am judge, don't talk to me!" That is not his disposition, though that may be the natural disposition of another, and be a virtue. This may be the disposition of the respondent, and be also a virtue, and equally enable him to feel a consciousness that he cannot be influenced improperly. These traits in the character of the respondent may account for a great many of these interviews and conversations of a friendly and intimate character.

Again I say there are none of the usual badges of guilt attached to the conduct of the respondent. He did not attempt to cover up or secrete his conduct It was all open and above board. The very publicity with which he did the things complained of is a strong proof to preclude the idea of guilt. Is not this true, and is not the conclusion true, that there are no badges of guilt about his conduct? He has not attempted to hide his acts. Every thing has been done open as the day in his whole conduct. All these conversations and interviews have been known to the world. His conduct with Sanderson, his position in the Taylor matter, in the Hungerford and Cushing case, and in all the matters that have been spread out here, have been in public, even upon the bench. All his conduct, both upon the bench and in the court houses of the different counties in his circuit; and, in private life off the bench, has been public. There has been nothing done in the dark, nothing that he has attempted to hide. They have not attempted to detect a single circumstance, in all his judicial career, that was even suspiciously secreted, or that has been attempted to be

suspiciously secreted. Now all this proof is strong and surrounds the whole case. It defines his position in this impeachment because it does go to preclude the idea, in all that he has done, in all that has transpired in connection with his official conduct, of any improper or corrupt motive.

To another circumstance I wish to allude. The respondent at the bar had the largest circuit in the state, and has the largest business to transact, larger indeed than any other two or three judges of the state. He has been four years or more upon the bench, and has worked forty weeks or more out of every year. Now if he has been corrupt—if he has made decisions for money, or would have decided for money, why is he not rich instead of being poor? Why has he become impoverished upon the salary the state has paid him? If he had a disposition to take money, he could have taken any amount of it. Where is the proof that in any case he has made a decision, or a promise of one, for money; yet that is just the accusation, because if they withdraw that, the others follow. The substance of the charge fails, unless money, the great mover of Judges, if they are corrupt, has been applied in his case, and he has received it; and yet there is not a particle of proof that he has ever taken a dollar as a bribe, and not only that—the proof is obvious of his poverty. If he would have done so he would have been rich now. The Cushing case, the Perry and Comstock case, the Insurance Company case, would have paid him what would have been a competence to him to have retired upon from judicial life. The gentleman may respond that he has it secreted and hid somewhere. Let them prove it if they can! I am sure I wish he had it in some way fair and honorable. But no! When he has so little ability to hide any of the conduct of his life, he must have still less ability to hide money, and corrupt means of getting it.

Another circumstance—and it is an important one—for you are to arrive at the truth of the facts set forth, and at the guilty intention with which they were done. His conduct was submitted to the scrutiny of the people, at the last judicial election. Then his acts were investigated, amidst the highest degree of excitement, in one of the most exciting elections that ever transpired. They were canvassed in the bar-rooms, in the streets, in the public press, almost in the very churches—everywhere these matters were subjects of public discussion, and his conduct was arraigned by an impeachment conducted not quite so calmly as this one is. All the passions of human nature were enlisted in the election, and yet when the public came to pass upon the matter, and his conduct came to be thus investigated, he was endorsed by a triumphant majority of the people of his circuit. I think the proof strong that the impeachment does not proceed from the people, although the people's name is used in this prosecution. The parties and suitors in his court never found fault with him, and never appeared against him. They never came here to get up this impeachment. They were satisfied with him, and the people of the circuit, who have just endorsed him by a re-election, are satisfied with him. Who is dissatisfied with him? Who wants to impeach him? What has been the motive of this prosecution? I say it is not truly alleged to be in the name of the people of the second judicial circuit. He has been there impeached, and they voted down the impeachment. They have endorsed him, and put him again upon the bench. Where this prosecution was gotten up, I know not and care not. I only know that it is seeking to drive him from his position bestowed upon him by the people.

Again, the industry and perseverance which have been devoted to the prosecution in this case, from its first inception to the present time, have never been equalled. The life, judicial and private of the respondent, has been under examination and cross-examination, and subjected to the severest scrutiny through months of investigation—through the whole legislative session of last winter, and from that time, in fact, to the present. Every thing suspicious has been made the subject of investigation, and the subject of accusation against him in these charges.

And now, after all this labor, after all this investigation, after all these accusations hurled against him, the proof is before you. I ask you to say, as you will have to say by your judgment, whether the charges and the accusations are made out. I ask you to say, whether any man who has been judge during that length of time, and done the same amount of business could come out of such an investigation, conducted with such industry, and in such a spirit, with cleaner hands, and more unscathed. It has been an ignominious failure on the part of the prosecution. It was to have been expected by his best friends, that in such a course of life, with such an amount of business upon his hands, mistakes might be made, errors might be brought up, which required explanation. I have heard the remark more than once, in Milwaukee, and here in Madison, on the part of persons who doubted his integrity, or who did not vote for him, that since this investigation commenced, they were satisfied he was an honest man as well as an upright Judge.

And now this case is before you for your decision. What disposition, as a Court, will you make of it? The public are looking on with intense interest, for the result of this prosecution. These charges have been spread before that public. They have read them. They have now read the proofs. They have been one tribunal to pass upon the conduct of the respondent, and they *have* passed upon it. The world has already decided the case. The public judgment has gone forth. It is not to be mistaken. Let not these Managers, let not this Court—let not the real prosecution wherever it be—entertain any doubt whatever upon that subject. When the prosecution shall go forth, they will meet the tornado which is sweeping the public mind upon this subject. It cannot be resisted. It will overwhelm them in confusion. The rocks and the mountains of annihilation will be invoked upon their heads, if they do not invoke them themselves; and I tell you they will fall, they are falling already. We live in a free country. The right of thought, of judgment, of discussion, is guaranteed to every man; and that has now come in fact, in our own blessed land, which Tacitus, under a Roman depotism, sighed for in vain, when men might say what they think, and think what they please. The public read, and think, and decide. They have done so in the present case. What we have to ask of you is—what we implore at your hands is—that the judment of this Court shall coincide with, and respond to, the judgment of the world.

I have done. The consequences of the judgment which you are called upon to render in this proceeding, are indeed, to the defendant, tremendous. His fate is in your hands. His name, his fame, his character, his earthly all, are dependent upon the result of your deliberations. The laborer is worthy of his hire—not only the laborer for a pecuniary compensation, but the laborer in an official capacity, who has earned a fame for ability and uprightness of conduct. The respondent at the bar is without fortune;—his good name, his reputation,

his honor, are all that he has left to him on earth, either for himself or as an inheritance for his children. And at this period of life, after his labors, incessant and unexampled, for the public, for so many years, without fortune, shall he be deprived also of his only earthly possessions? If, by the judgment of this court you deprive him of his good name and fame, you do send him forth to the world an outlaw and an outcast.

Nor are the consequences of your judgment confined to him alone. They are equally as momentous to others who are as near and dear to him as life itself. His sons—young men just entering upon manhood—appeal to you to save them from an inheritance of disgrace, and to save the name and fame of their father and friend. This appeal, though silent and unheard, is none the less real, and should be none the less felt.

And, in yonder city, in the silent and unspeaking grave, lies one, whose spirit, could she speak from the Heavens, in the voice of love, and with the mercies of our God, would implore you to save the head of him, who for so many years of this mortal life, was the object of her love, and the father of her children.

And, in yonder cottage, almost within the hearing of my voice, there is yet another who is waiting, with intense solicitude, the result of your deliberations. She waits, in unshaken confidence and devoted love, for the accused. She is in deed as well as in law the wife of her husband, and she would clasp that man to her breast, though her arm were in a flame of living fire till it burned to its very socket! Her prayers are all around you—her hopes are all dependent on you. On bended knee, and with eye uplifted prayerfully to Heaven, before you, she implores you: "O, give me back the husband of my youth! I can surrender him to God—I can surrender him to my country—but O! spare the blow which, while it destroys him, dooms me to lean upon a broken reed, and to a life without a hope." Fell blow, indeed, which would destroy the prospects of one so young and beautiful, which, in a moment, would

> Change the current of her sinless years,
> And turn her pure hearts' purest blood to tears.

Her arms are outstretched to receive him, and their embrace will be warmer and purer, should the judgment of this court vindicate the honor and fame of her husband in the judgment of the world.

Judge HUBBELL. I have a single remark to make. I am deeply grateful to the learned and eloquent counsel who have vindicated my cause before this court. But I wish to say to this court and to the world that I have not shunned this investigation. In my office I have acted as I thought was right at the time, and at all times. If the proof—if the evidence—if the truth, condemns me, I wish this court to say that I stand condemned. Upon the law and testimony, as you, in your consciences and understandings, believe them to exist, I wish my sentence to be pronounced.

Mr. SANDERS. With the consent of the court I would like to enquire of the counsel for the respondent, whether they have now concluded their argument or arguments.

Mr. ARNOLD. That is a question which I think does not require an answer.

Judge HUBBELL. We have nothing farther to offer. We are done.

TWENTY-EIGHTH DAY.

FRIDAY, July 8.

MORNING SESSION.

ARGUMENT OF H. T. SANDERS, Esq.

Mr. PRESIDENT: On the 5th of March, 1853, the Assembly of the State of Wisconsin, appeared at the bar of this Senate, and, in the name of themselves and all the people of this State, impeached Levi Hubbell, Judge of the Second Judicial Circuit, for "crimes and misdemeanors, and for corrupt conduct in office;" and then and there, the Assembly pledged their faith, they pledged the faith of the people of this State, that, in due time, they would exhibit Articles of impeachment against him, and make good the same.

And now, Mr. President, that this trial is about to be brought to a close, and to be submitted to this Honorable Court for a final determination; here in my place, as one of the Managers on the part of the Assembly, I say, with great confidence, to this Court, and I say it before the world, that that promise has been fully, and in all respects, redeemed. The Assembly, in the discharge of a constitutional duty, have been called upon to perform this task—not that it was an enviable one; not that they did it in anger or revenge; but in justice to the people, in justice to the respondent before this Court, to vindicate the purity of the judiciary of the State, they were called upon to discharge the trust. There was no alternative presented between inclination and duty. All would have avoided it; but under the reponsibility of an oath none could shrink.

Considerable has been said by the respondent and by the counsel for the respondent, of the spirit manifested on the part of the prosecutors, and of the motives of this prose ution. Although it has nothing whatever to do with the case, although it does not bear the weight of a feather against the guilt, or in favor of the innocence of the Judge of the Second Judical Circuit, it has been said, and for some motive and for some object; but for what, it is not for me, as one of the Managers, to determine. And inasmuch as the learned counsel for the respondent has travelled somewhat out of the record, and has spoken matters somewhat disconnected with this case, and of the Honorable the Assembly in no very complimentary terms, I feel called upon, in presenting this case to the Court, in my feeble way to vindicate, so far as I can, the action of the Assemely, to vindicate the motives of the men, to vindicate the motives of the body. It was rumored here in this Capitol, in these halls, in the early part of the session, that charges were to be preferred against one of the judges of the State; and that rumor fell upon men's minds with astonishment. Men were amazed that the judiciary of our State, a co-ordinate branch of the government, a branch upon which depends the stability and usefulness and perpetuity of our institutions, should be brought before another branch of the government, charged with being guilty of crimes and misdemeanors, and corrupt conduct in office. And as you could see men, or hear men, and hear the whispering of this thing, the rumor was like the deep dead swell of the ocean. Men were moved by it—not by anger; but they were nerved to the discharge of their duty.

In the early part of the session, through the Honorable the Speaker of the Assembly, a citizen and an elector of the State, presented an humble petition:

"The undersigned, a citizen and an elector of the State; hereby charges the Honorable Levi Hubbell, Judge of the Second Judicial Circuit of this State, with having committed, and being guilty of high crimes and misdemeanors, and malfeasance in office, and has so acted in his judicial capacity, as to require the interposition of the constitutional power of the Assembly.

I therefore request you to lay this commuication before your honorable body, so that an investigation may be had, to enable the Assembly to determine whether or not the constitutional power of the Assembly ought to be exercised in regard to the Hon. Levi Hubbell.

WILLIAM K. WILSON."

When that communication was read from the desk of the Speaker, when the announcement was made before the Assembly, it fell like a thunderclap upon the House. That body of men sat there in mute silence. All were amazed, and no one dared for a moment to assume the responsibility of taking the initiative. It was presented without solicitation; it was presented by a citizen of the State. He appeared there in the discharge, and in the exercise of his constitutional right, and presented his humble petition, and his humble prayer, and demanded the interposition of the constitutional power of the House. At last my Hon. friend, Mr. Simpson, an entire stranger to the respondent and not a resident of his judicial circuit, arose in his place and moved its reference to a select committee. And in his behalf I am authorized to say, that that motion was made without solicitation. It was made because he knew no other course to take. It was not a proper subject to be referred to the judiciary committee, nor to any of the standing committes of the House. It did not come within the ordinary scope of legislation. It was a matter that demanded the action of a special committee, raised for that purpose. The Speaker of the Assembly in raising that committee so far as I know, did not consult either of the members of the committee, and did not consult any member of the House; but made the appointment upon his own responsibility, selecting men who lived out of the district, and who were entire strangers to the respondent and who had no personal feelings of friendship or anger to gratify. That committee was composed of three lawyers and two laymen. I believe none of them had the pleasure of a personal acquaintance with the Judge of the second Judicial Circuit, and but two of the committee had ever seen him. Of the members of the profession of law, I believe not one had ever had occasion to try a case before him, in his Circuit.

That was the way the committee was raised to investigate this matter. That was the manner in which this prosecution was begun. That committee after their appointment, met in their room for the purpose of hearing the evidence which should be presented to them. And I will say here, in justice to that committee, that, from the commencement of the investigation up to the time of the closing of the testimony, they held no consultation with each other upon the weight or force of the testimony received. They held no consultation with any person outside. Each man kept his own secrets, and his own feelings, and his own judgment, sacredly and secretly locked up in his own breast. It has been said that they sat there as an inquisition; that they sat there with closed doors. That committee forbade no one admittance, because no one, no person who was not interested in the subject matter before them, so far violated the rules of propriety, as to attempt to come in. They were clothed with power to

send for persons and papers. They had no discretion. They could only exercise the power conferred upon them by the Assembly. They could not, without the consent of the Assembly admit the respondent nor his counsel to appear there and examine and introduce witnesses in his behalf. It was not for the committee to notify him that the communication had been made to the Assembly. There it was. It was spread out upon the records; and he and all the world could know it. It has been said that he was refused admittance; that the course which was pursued in the impeachment of Judge Peck, was not pursued in this case. They admitted Judge Peck to appear. The House notified him that the charge had been preferred, and he did appear; but I believe it is the only case on record, the only case, in this country at least, where a respondent has been arrayed before the impeaching body and interposed his defence.

But farther upon this subject. A friend of the Judge of the Second Judicial Circuit—and when I say a friend of his, I mean what I say—one who would watch his reputation as a father would watch and guard the reputation of his child, applied to members of this committee, applied to a majority of that committee to know if they would consent to admit the respondent and his counsel to examine witnesses in his behalf.

Judge HUBBELL. Never, with my consent!

Mr. SANDERS. I do not say with the consent of the respondent. I say the application was made by a friend of his. He applied to me. He applied to my Hon. friend, Mr. Simpson, and to another member of the committee; and he received the same answer from all—"most certainly, make the application and you can appear."

The Court, Mr. President, will pardon me for traveling out of the record; but I feel called upon, in justice to my own position, in justice to my associates, in justice to the Assembly, to spread the facts connected with this matter before the world. There was no inquisition. We sat there, and we heard the evidence; and finally, when the testimony was closed, when that committee for the first time closed their doors and sat in secret consultation, then there was a deep and solemn pause. No man desired to utter his opinions first. When the question was asked—"What think you of this, what think you of that, and what think you of the other allegation;" no response was made, until one member of the committee, and a layman too, broke the dead silence. Said he—"I entered upon this committee as a friend of the Judge of the Second Judicial Circuit. I am now the friend of the Judge of the Second Judicial Circuit; but with this testimony before me, with the facts which I have listened to impressed upon my mind, I cannot, in justice to myself, in justice to my own conscience, say anything else than that he should be removed from the exercise of his judicial power." This is a brief and true history of that secret inquisition. No man's private character was inquired into; no man's secret motives were searched. They sat to draw out the facts connected with his judicial character.

That committee made their report on the part of the State; and it is a part of the history of the State. They reported charges and specifications, with a recommendation that the Judge of the Second Judicial Circuit be removed from his office by address. The committee made this recommendation for the reason that, upon the testimony received before them, at least a *prima facie* case had been established, such a case as would authorize a grand jury, acting under oath, to make a presentment; and they recommended the removal by

address, believing the power to remove by address and to impeach to be a concurrent remedy for the sole and only reason that they wished, so far as they could, to spare the respondent from the terrible sentence which might follow an impeachment—a judgment of "disqualification to hold an office of honor or profit."

That report was received and acted upon in the Assembly. Much discussion was had upon it. In doors and out of doors it was said it would be unjust to the respondent to try him by the two Houses; it was so ponderous a Court, that he could not have as fair and impartial trial before the two Houses of the Legislature, as he could have sitting before the Senate to try impeachment; and, although I had signed that report, and had recommended a removal by address, after mature reflection, and upon consultation with his friends, for one I came to the conclusion that, so far as my vote or my action was concerned, as a member of the Assembly, I should cast my vote to try him by impeachment; and I did it for this reason, the reason which I assigned then, and which I will repeat here—I had been a member of that committee, and had heard the evidence given and had heard it read through; and there was a strong possibility, nay probability, that my mind was biased, and being so I could not, in justice to the respondent and my own conscience, sit as one of his triers. With my opinions of what a man should be, sitting as a judge to try his fellow man, believing that he should go into the investigation with his mind as pure and unspotted as the unsunned snow, I could not, in justice to my own conscience, sit there and give my vote as a trier of the respondent; and I believe that that was the motive which influenced the majority of that House to send the case here for its final determination.

This, I say again, is a history of this impeachment up to the time it came into this Court; and it is a true history. And as one of the committee, as one of the Managers on the part of the Assembly, I am perfectly willing the history of this case should go before the world side by side with the declaration that we sat there as inquisitors, governed by malignant motives.

It has been said that, on the part of the Assembly, no pains have been spared to bring out all the testimony that would bear against the respondent and that no effort had been left untried to substantiate each and every allegation. That is true. The Assembly could not, in the faithful discharge of their duty, after having presented charges and specifications before this Court do less than to exhaust all the means within their power, to produce all the evidence that could be produced for the purpose of sustaining the charges and allegations.—They owed it to themselves, and, above all, they owed it to the respondent to bring forward that testimony. And when this cause shall have finally closed, whatever determination may be the judgment of this Court, I know that the Assembly and the Managers on the part of the Assembly, will go home with the consciousness that they have fearlessly and manfully discharged the trust imposed upon them; and for one, I say it here and I say it elsewhere, I am prepared to breast the tornado of public indignation. I am prepared to stand beneath the hills and rocks, for I have the consciousness to know that I have done my duty; and wherever duty is concerned, for one I will never pander to public opinion, be that opinion what it may. It is sometimes right and it is sometimes wrong. It sometimes judges truly and sometimes erroneously. It may be a good guide for the man of policy or the man of expediency; but it

is no criterion for a man to go by who intends to walk in the line of his duty. A very learned Judge of New York once said, in speaking of public opinion—"It may at times be a good rule to live by; but it has been a very bad law since of old, public opinion cried, 'crucify him! crucify him!!'"

I have said thus much of this case, not that I expect or hope that it will the least bearing whatever upon the judgment of this Court. I have said it for the purpose of justifying the action and conduct of the Managers and the Assembly. I will now proceed to a hasty examination of this case, and in what I may have to say of the law or the testimony, I shall present my views to the Court candidly and impartially. It is not for me, as one of the Managers of the Assembly, and as one of the prosecutors of this case to stand here in the character of prosecutor. We stand here between the respondent and the public. We stand here to see that the law of the land is impartially administered. We do not ask that the respondent shall be unjustly convicted. We do not ask that one hair of his head shall be hurt without there is just cause. All we ask on the part of the state is that this cause may be decided according to law and evidence.

There has been considerable discussion as to what was matter of impeachment, and as to the power of the impeaching body.

"The Court for the trial of impeachments, shall be composed of the Senate."

"The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors.—*Constitution of Wis.*

It has been contended on the part of the Assembly by the counsel who opened this case, that, under the peculiar provision of our Constitution the Assembly were the sole Judges of what was impeachable matter, and that it was the peculiar and only province of this Court to try the impeachment upon the evidence as presented by the Assembly. The House of Representatives, shall have the power of impeaching.—They have the sole power to accuse and it is their judgment that is to determine what shall be impeachable, and what shall not.—They do not stand in the light of a grand jury. They are a co-ordinate branch of the government. They come here from all parts of the State. They come here acquainted with their own locality. They come here knowing whether the conduct of the Judge has been such as to bring the judiciary into scandal and contempt; and for that reason they have the power of impeaching for crimes and misdemeanors. "A crime or misdemeanor is an act committed or omitted, in violation of public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which properly speaking are mere synonymous terms."—*4th of Black. Com.*

Now the words, "crimes and misdemeanors," as used in the constitution, comprehends crimes committed out of office as well as in office. That is, if a Judge is guilty of committing a crime, although not connected with, or growing out of his official duty, is nevertheless impeachable, and he may be removed by impeachment for the reason that he has violated a known law of the land, that he has committed a crime and is unworthy to sit upon the bench and administer justice. At the common law an impeachment was a bar to an indictment; but the constitution of this State, expressly provides that the party impeached, shall be liable to an indictment, trial and punishment according to law; so that the trial in this Court is a trial of the officer, and not a trial of

the man. He is to be tried because he is unfit to hold his office, because his conduct tends to bring the office into scandal and disgrace. The power to impeach for corrupt conduct in office, confines the impeaching body to acts growing out of and connected with the official duty of the officer. That corrupt conduct need not be criminal; that is, it need not be a violation of any known law, either written or unwritten. It is for the corrupt conduct. Every officer of the State, when he enters upon the discharge of his duty, must take and subscribe an oath or affirmation to support the constitution of the United States, and the constitution of the state of Wisconsin, and faithfully to discharge the duties of his office to the best of his ability. There is a solemn and impressive oath, as much the law of the land as any other part of the constitution; and before he enters upon the duties of his office, he calls God to witness that he will faithfully discharge the duties of his office to the best of his ability.—Well, now then, any unfaithfulness on the part of an officer—any partiality on the part of a Judge—any arbitrary exercise of judicial power—in fine, any conduct which tends to the manifest scandal and corruption of the administration of justice, is, by the very terms of the constitution, and by the oath which the officer takes, impeachable matter. On this point I read from the second volume of Chase's trial, pp. 388 and '9. It is from the argument of Mr. Nicholson. "I beg this Court seriously to consider," &c., down to "he could not be impeached."

One of the learned counsel for the respondent, my friend, Mr. Knowlton, claims that, a Judge cannot be impeached unless the offence is indictable. This position we utterly deny. I will read to the Court the charges made against Judge Addison, who was impeached before the Senate of the state of Pennsylvania, and was convicted.

Mr. KNOWLTON. Do you think that good authority?

Mr. SANDERS. I do think it is very good authority.

Mr. KNOWLTON. That's all I wanted to know.

Mr. SANDERS. I will read the charges. (Mr. Sanders read the charges.)

There was no offence against any known law. It was for the mere exercise of judicial power. The counsel asks me if I think that is authority. Most assuredly, we say, that is authority. For the Attorney General of Pennsylvania filed an information in the Supreme Court of that State, for the purpose of trying the conduct of Judge Addison, before the Court. And upon this point, I read from Chase's trial, pp. 394, '5 and '6. Because the case of impeachment and comments of the learned Managers, on the trial of this cause, we here presented in a more concise manner than in the report of the trial. (Mr. Sanders read from Chase's trial, an account of the trial of Judge Addison.)

We have not only the authority of the judgment passed upon Judge Addison by the Senate of Pennsylvania, but we have the decision of the Supreme Court of Pennsylvania directly in point.

I refer the Court to another case of Impeachment and conviction—a case where the act charged was not a violation of any known law. I refer to the trial and impeachment of Judge Pickering of Massachusetts. There were four articles preferred. The first, second and third, relative to delivering over property and releasing a vessel without a necessary bond being given.

[Mr. Sanders read the 4th article.]

Upon that charge as well as the other, Judge Pickering was impeached.

The vote stood, guilty, 12; not guilty, 7. We claim that case as authority upon this subject as well as the case of Judge Addison. They are the two earliest cases of impeachment in this country. They give a construction to the law of impeachment, going to show, beyond any question, that a Judge is liable to be impeached for an offence that is committed in violation of any known law.

[Mr. Sanders read again from the 2nd vol. of Chase's trial, page 340.]

I have read these authorities for the purpose of showing that, in the early history of our country, the construction has been given to the power of impeachment which we claim for it here—that it need not be an indictable offence, but that the power is a discretionary one—that it is undefined and can be exercised by the impeaching body whenever the conduct of the officer brings the office into disrepute. Judge Peck's trial has been referred to here, as an authority. Judge Peck was impeached for the exercise of a doubtful power in relation to which there was much conflicting authority. The accused before his court stood charged by the laws of the land, and the court tried him for contempt, in a publication which, Judge Peck claimed, brought the court into disrepute. It was alleged against Judge Peck, that the power did not exist, and if it did exist, it was abused by him. That was a judgment passed by Judge Peck in the exercise of his judicial power. If it was a mere error of judgement as such, it was not impeachable, nor do we claim it. We claim it that when a Judge is charged with corruptly doing a thing upon the bench, in the exercise of his judicial office, over which he has power; in order to correct him, you must show that he did it with a corrupt intent; that he knew he was doing wrong and did it corruptly. That is the position which they take, and which we do not deny. We admit that that is the law and the rule. We admit that the consequences of his own acts do not apply.

The consequence was the suspension of Lawless from the bar, and judgment of the Court; and in order to make that impeachable, the burden of the proof was upon the prosecution, to show that he acted corruptly. It was urged in his defence, that his act was a judgment of law of which he had jurisdisdiction, and that if even the weight of authority was against the jurisdiction, his act was only an error of judicial judgment. And as to the abuse of the power it was contended in his defence, that the judgment was not excessive, but was reasonable, and that even if it should be held excessive, yet if he possessed, or was warranted by the authorities in believing that he possessed the jurisdiction, it must be shown that his abuse was wilful, in order to make it appear that his act was not an error of judicial judgment. That was the position claimed then. I believe that is a correct statement of Judge Peck's trial. But we say, in contradistinction from that rule, that where an officer violates a known law, he is supposed to stand by the consequences of his own act. It is supposed that he intends to do that act for the purpose of bringing about the consequences. If, for instance, parties collude for the purpose of obtaining a divorce. The Judge is party to that collusion. He advises that collusion. All the rules of our law maintain that a divorce cannot be granted in cases of collusion. But the parties collude. The Judge is a party to that collusion—he knows it and advises it. Now, what is the conclusion? Why, that he intended the consequences of his own act—that is, he intended that a divorce should be granted by collusion of the parties. That is in violation of known law. Suppose another case. By our statute we file a bill to foreclose a mortgage. We enter a rule for the de-

fendant in case of a personal service, to appear and plead in answer, or demur to the plaintiff's bill within thirty days. That is fixed by statute, and by the law. The order *pro confesso* cannot be fixed before the thirty days expire. But before the thirty days expire, suppose the Judge permits a rule to be entered, taking the bill as confessed by the defendant, and grants a decree of judgment.

Well then, if that is done in several cases it has been done in violation of law. He grants a decree, but the statute is imperative against that action. What is the conclusion? Why, that the Judge intended to grant it in violation of law, and no corrupt intent could be shown, because it is infered from the act—the act being in violation of known law. Take another case. Grand Jurors are sworn to keep their own secrets and the secrets of their fellows—to present no man for hatred, envy nor malice. Suppose the Judge goes down from the bench and goes to a grand juror, and advises him as a juror to make a presentment. Well now, whether that presentment be well founded, or not, makes no difference. The conduct of the Judge is none the less corrupt—it is none the less violative of law, and the corrupt conduct is inferred. He is supposed to intend the consequences of his own act, because he already violates the law of the land. In the case of Judge Peck the Court acquitted him by a bare majority—22 not guilty; and 21 guilty—but upon which of the several grounds urged upon his defence cannot be known nor determined in the case. And we say it is reasonable to believe that the Senators who voted for his acquittal may have voted upon each ground urged in his defence. The acquittal settles no principle of law, and no principle was urged. Where every act charged is a violation of positive written law, or a violation of known fixed rules of law, an ignorance of which would unfit a lawyer upon the bench, or layman of the jury box.

We say that case settles no principle involved in this case. We do not charge the Judge here with corruptly making a decision upon the bench, because if we did, the burden of proof, we admit, would rest upon us. The well settled principles of law—the rule of evidence applies to all these cases; and the rule laid down in Peck's case does not apply.

[Mr. Sanders read from Roscoe's rules of evidence, page 18.]

That is the rule, the violation of a known law by an officer, or by a citizen is presumptive evidence of a corrupt intent, and the burden of proof is then shifted upon the respondent to negative that presumption. Take a case in the ordinary transactions of life. I have no right to take my gun and go out and shoot my neighbor's ox; although he may be in my fields, and the owner is liable to me in an action of trespass. If I do it I am liable for the reason that I have no right to shoot him. I became liable as a trespasser. But suppose in the night time the ox gets into my field of corn, and I take my gun and go out and suppose it to be a bear, or any animal I have a right to kill, and I shoot, and then find upon examination that I have killed my neighbor's ox; I am not liable for that ox. There is no corrupt intent to be inferred from the act; whereas if I did it openly, with my eyes open, knowing it to be my neighbor's property, the corrupt intent would be presumed from the act itself; and the same rule applies in criminal matters.—Take a case of larceny. You lose your pocket book. It has been gone a long time. An individual is seen going to an unusual place. He picks it up, puts it in his pocket and walks off with it. From that act you presume he committed larceny. The felonious intent is presumed.

But upon the subject of intent I do not propose to occupy the time of the Court any longer. I shall now briefly notice some of the charges and specifications, and shall leave the remainder to be commented upon by the counsel who is to follow me. We intend so far as possible to divide the labor of commenting upon the charges and specifications, for the purpose of saving time.

It was said on the part of the counsel who opened this case for the prosecution, that these charges and specifications weighed down in enormity all the charges and specifications that had ever been preferred against any judge, as lead would weigh down feathers. Yet in reply to that, the counsel for the respondent says there is nothing criminal in them; that there is no criminal intent; that there is nothing charged there which is impeachable; that it is the "foetid spawn" of malignity and corruption. How is it with all this mass of evidence that has been spread before this Court? I would ask the counsel for the respondent, if in these charges and in all this testimony, he can see nothing wrong? He can see no guilt. It elevates the Judge of the second judicial circuit, rather than disgraces him. He says that it is evidence of his purity upon the bench; that it furnishes the proof of his innocence; that it is a vindication of his judicial and moral character. Well, if neither of the counsel for the respondent can see anything wrong in all this, I must say to them, in the emphatic language of the respondent himself, "May God have mercy on their consciences." The first Article charges as follows: (Mr. Sanders read the Article.) It is claimed on the part of the respondent, that in this interview there was no impropriety; that it was proper and competent for the Judge to counsel and advise with Sanderson, in relation to the mode of proceeding by attachment. We say that there was the grossest impropriety in it. There was a suit involving thousands, involving immense fortunes, in which the defendant, Sanderson, had more interest than any other man. He came here to Madison, and came here as, we had a right to infer, for the sole, and only purpose of advising and talking with the respondent. He came here, no doubt, because there was a dispute among his counsel, as to the proper mode of proceeding, because they were undetermined as to that matter, and he went home with confidence. In that interview, whether the Judge advised him right or wrong, makes no difference. It was a gross impropriety on the part of the Judge, to come down from the bench to advise with suitors before the Court, as to the weight and importance of the testimony, and as to the best way of commencing a suit. This principle is recognized by our statute. I remember an instance in the case of a Judge of Probate. He is not permitted to draw any papers, he is not permitted to do anything, except to pass upon the matters presented to him, for the reason that there is a gross impropriety in it, that it tends to scandalize the administration of justice, and render it disreputable. Well, then, Sanderson went home, and the next day after the cause was tried, Mr. Sanderson starts for New York, and tells the complainant what the judgment is to be, and tells him that he ought to make the respondent a good present; that the expenses of his election had been great, and he could not live and support his family out of the salary of his office. How did Sanderson come to know this? How did he know what was going to be the judgment upon that traverse? He left for New York the next day after the case was tried, and it was submitted to the Judge. The Judge had a long and tedious term, and tried some sixty suits. According to the testimony of the respondent's counsel, he did not commence the investi-

gation until the Sunday preceding the time of pronouncing the decision. Now, I ask, how did Sanderson know what the judgment was to be, when he went to New York? How did he know what to say about making a valuable present? Where did he get his information? The counsel did not know it. The parties did not know it. The Judge himself, it is pretended, did not know what that decision was to be. It was an important case, involving important points of law, and the Judge took it for investigation at his rooms. Now, I ask, how did Sanderson know what that judgment was to be when he made that proposition to the plaintiff in the suit. Sanderson returned from New York on Monday or Tuesday. The Sunday previous, his counsel went to the Judge's room and found the Judge there investigating the case then for the first time, and yet, before he had gone through that investigation, he said he had just looked into the case, he had determined his decision in his own mind; that is, before he had got through the examination, he informed the counsel what the judgment was to be.

Mr. ARNOLD. That is a misrepresentation of my testimony, Mr. Sanders, and also of Mr. Sanderson's. I did not say he had not gone through the examination.

Mr. Sanders here read at some length from the testimony of Mr. Sanderson, and proceeded as follows:

Mr. Sanderson said he did not tell Mr. Perry that the decision was positively made, but he gave him his views. How did he arrive at his views. His counsel did not know it, and had not advised him of it. I say we must infer from the fact, that he came to Madison and talked over the matter here, and went home with great confidence of success, and immediately upon the termination of the trial, informed the plaintiff what the judgment would be in his opinion, that he got his opinion from the bench. Where else could he get it. Why was he so anxious that the plaintiff should make Judge Hubbell a present, and why did he come home, and in the form of a loan, make him a present? Now we say that the loan which Sanderson made to the Judge in the U. S. Hotel, was but carrying out the arrangement he had made with Perry in New York prior to the decision of the case.—Now there may be no impropriety in a Judge announcing his decision to counsel. There may be no impropriety in announcing it to suitors. But it does seem to me, that in a case of the importance of the Sanderson case, upon a preliminary issue, when the case itself is undetermined in his court and the main question is yet to be tried between the parties, that it is improper for a Judge to announce his decision to either counsel or suitor off the bench. Now then, in relation to this loan, it is claimed on the part of the counsel for the respondent that it was but a mere loan that the Judge received it as a loan, although Sanderson intended it as a gift, and that Judge Hubbell is not to be charged with Sanderson's corrupt conduct. The Judge had been apprised by Sanderson that he intended it as a gift, and, as Sanderson says, the Judge told him he could not receive it as a gift. Then why, I ask, and I ask it seriously, why go through with the performance of a note—of calling Sanderson there to pay him, and then not having the money, and executing the note, and then sending to Sanderson to pay him the money, and then Sanderson's coming to receive it, and then going out of the Judge's office, and leaving it upon a chair. Now that may be all very well. It may be all that the counsel for the respondent claimed that it is and that the Judge acted inno-

easily in receiving it as a gift. If that be true, why, in all conscience, when he found that money lying upon the chair as the price for his decision—as the purchase money for his judgment—why did he not throw it after the man who had thus attempted corruption? Why didn't he throw the bribe in his face—throw it after him—follow him into the streets and tell him that was not the price of a judgment in his court. The counsel says that the publicity of the act—the fact, that it has become public, is a circumstance to show that their version of the transaction is correct. Well it seems to me that the conduct of the parties is a very strong circumstance to show that it is not proper on the part of the Judge, nor on the part of Sanderson.—It shows that Mr. Sanderson, for some reason or other, and for some cause, had the audacity, had the boldness to approach the Judge—that he had the boldness to offer him $200, as a price for his judgment, and Sanderson says it might have been five hundred as well as two hundred. It was not the amount of money that he stood upon; he was willing to give any sum for a favorable decision. Well, we say on the part of the Assembly, that it is highly improper in a Judge to have anything to do with the pockets of suitors in his court, or with their money. He should not tamper with it, either in the form of a present or the form of a loan. Now then, there is a circumstance connected with another case, in these articles of impeachment, which seems to me to give character and weight to this transaction, and that is this—it is in testimony, that after the decree was granted in the Craft case, and Judge Hubbell met Mr. Elmore, although he did it playfully, he asked him to tell Craft to send him a present for his wife.—Now it seems to me, that a Judge who will solicit a present from a suitor in his court, would receive one as a price for his judgment.

Article second charges that "the said Levi Hubbell," &c. (Mr. Sanders read the article.) The first specification is the Taylor case. I shall pass that. The second and third specifications are the Humble and Miller cases, these I shall pass.

The third article is the case of Haney.—That I propose to pass also.

Article four, specification first, is the Kane and Howe case, wherein it is charged that the Judge sat in the Supreme Court, entertained that matter, and passed his judgment upon it, after having been of counsel for Cogswell and Kane, in the subject matter out of which that suit originated. I only wish to submit one or two remarks upon that specification. It has been claimed on the part of the counsel for the respondent here, that because the prosecution have failed to prove a retainer to Judge Hubbell, that is to prove a payment to him by Kane for his services, therefore he was qualified to sit, and the inhibition of the statute did not apply. Now then that may be the wording of the law, but certainly it is not the spirit of the law. The spirit and object of the law is to prevent a Judge from sitting and adjudicating upon a matter wherein he has been of counsel; and whether he had received pay or not, makes no difference. Has he been advised with? Is he familiar with the facts? Then the spirit of the law applies, and he is prohibited from sitting.—Now there is no dispute upon one point—that Judge Hubbell did draw the answer of Kane, whether he was retained or not.—Every lawyer knows that, when Judge Hubbell sat down to draw that answer, he had to look at the bill there, and he drew such an answer as would answer the equities of the defendants. He must of necessity have consulted with them as to the transaction, whether with Cogswell or Kane

makes no difference. He was familiar with the facts. Did he, as a lawyer, give his advice as to the facts detailed to him by either party interested? If so, the statute applies that the Judge is disqualified from sitting. Judge Chandler testifies that Judge Hubbell told him that he had drawn the answer of one of the defendants, but he feared he had committed perjury in it, and he did not wish to draw the answer of the other. The only question upon which they wish to hang their defence is, whether or not Judge Hubbell was retained and paid. It seems to me it makes no difference whatever. Without that inhibition, we say it is grossly improper in a Judge to sit in a cause after he has been of counsel. It is not testing parties fairly.—No man can counsel and advise with suitors and then go upon the bench and pass upon questions that arise upon the trial, without being biassed and swayed by the opinion which he formed as counsel.

The next specification is the Hungerford matter. On that I only wish to make one remark. One of the counsel for the respondent, although he said it upon his own responsibility, said that this Court would not have been convened here to try this impeachment if it had not been for Caleb Cushing's money. And he said further, he could substantiate his statement. He uttered his belief, accompanied by the declaration, that he could substantiate that belief, on that charge. Well, what Caleb Cushing has to do with this case, we do not know. His name is mentioned here in two of these charges and specifications. He has not been a witness, and has not been a party; and why should the counsel drag before this Court a man standing high in the councils of the nation, a man of learning, and, as I believe, a man of integrity; at any rate he has been honored with high judicial, civil, and military stations, and it seems to me that it is highly indecorous and indiscreet in this cause, to travel so far out of the record, as to attack the character and standing of any man, when he has no opportunity to defend himself, nor to reply to the charge; and as to the money of Caleb Cushing, if the gentleman knows that it is so—that it has been expended to promote this prosecution—I trust he will in due time substantiate the charges he has made here.

The next specification is the Hart case. The defence in this charge is, in the first place, a technical defence—the allegation being that the application was made to David Irvin, Judge of the 2nd district of the Territory of Wisconsin, which application had been refused by the said David Irvin. They say that when we failed to show that the application was made to the Court, this specification falls. The charge is, that the application was made to Judge Irvin for an order to take testimony under the statute which required the application to be made to the Judge and not to the Court. We have proved the specification just as we have made it. We have proved it by offering in evidence the petition for a divorce, the order for a hearing and the letter of Judge Hubbell addressed to Judge Irvin. Now then, for the purpose of that allegation, we say it is immaterial whether the application was made to the Judge, or whether it was made to the Court. We say it is immaterial whether Eliza Hart had been served with a process or not, or whether the Court had jurisdiction, or whether it was by the direction or advice of the parties. The application was made to Judge Irvin, and made by the respondent as the counsel of Hart. They say to this, as they say to the Howe matter—that Judge Hubbell was not retained by Mr. Hart. Now, what difference does it make, whether he received his pay of Hart or not. He says himself, that Mr. Hart was his client. He

says, "my friend and client of Janesville." He had drawn the petition for divorce, and he knew what Mr. Hart's wrongs were. He says, "he was troubled with a helpmeet, who would neither fish nor cut bait." Well then, after he was elected Judge, he calls upon Mr. Smith, hands the papers over to him, advises with him as to the case of divorce and the grounds upon which it is to be pressed, tells him it was his case, and that it was among the cases that he was committing to the members of the Milwaukee bar.

The question to consider is this; had the respondent been counsel for Hart and been advised with by him? Did he know the grounds—did he know what the proof was to be—had he, as attorney, passed his opinion on the validity of that proof? If he had, to say nothing of our statute, as we said of the Kane matter, it was grossly improper for him to commence that suit in his own Court, when he had been of counsel, and to sit in judgment and to grant a decree. There is no pretence that there could have been consent given there, for there was no service of notice upon the defendant. The defendant was not within the jurisdiction of the Court. She could not come then and give her consent orally or in writing. It was not in her power to confer jurisdiction upon the Milwaukee Circuit Court to try and determine that case. Now then, the gentlemen say the proceedings were all a matter of course; that is, they were entitled to their order, *pro confesso*, and to take their decree. The rule, as I understand, is to take their order *pro confesso*, and a decree follows. The Court are to pass upon the regular proceedings. They are to pass upon the weight and competence of the testimony. Had the Judge of the Second Judicial Circuit been counsel, and advised, in relation to this matter? If he had, we say his conduct in sitting as Judge, after having been counsel for Mr. Hart, in granting him a divorce from his wife, is such corrupt conduct in office as is impeachable, and it furnishes sufficient evidence that the Judge of the Second Judicial Circuit is not a fit or proper man to sit upon the bench and administer justice.

Then we say again, it was improper again to offer himself as witness. He knew it was improper, for he asked the question of Mr. Smith if he thought it was improper to be a witness, and Smith replied,—of that you must be the judge—you must be the judge of what is proper or improper conduct in yourself, and whether it is proper to be a witness in this case, and then go upon the bench and grant the decree. It is true we have no statute law, prohibiting a Judge from being a witness; but how can a Judge be a witness in a cause where he is sworn in court. The clerk administers the oath, but the clerk is the organ of the court, therefore it is highly improper. He should not sit upon a case in which he details facts as a witness. That is true in a case of a justice of the peace. A justice cannot be a witness in a case tried before him. Either party may submit their affidavit that the justice is an important witness, and that the case must be transferred to the next nearest justice to try it. That prohibition is based upon the ground that it is highly improper for the court to be Judge and witness both.

The next case that I shall speak of, is the first specification of Article five. They say here in relation to this specification, that the act charged here was done by consent. Well, what if it was by consent. He says I am the court, I can take the money.

Now although the parties may consent to some proceedings, they cannot

consent for the Judge to do an improper thing. If they do, does that render the conduct proper? Suppose the Judge receive money as a bribe, or receives it as the price of a judgment, is it any defence to say that the judgment was proper and according to law?—Why, it makes no difference so far as the guilt is concerned whether he pronounces a judgment, according to law, or in violation of law. The guilt is the same because the tendency is the same. So with receiving money. Although parties may wink at it, he claims to be the court and to have a right to take the money, and does take it and use it. Now the consent of parties does not render the act a proper or suitable one, and we say that is no answer whatever to the specification.

Then there is the Craft case. Now they claim on the part of the respondent, that there was sufficient evidence to grant a dozen divorces—that the judgment of the Court was in fact, a correct judgment upon the testimony. Well, it seems to me that that does not diminish the guilt; that it does not alter the fact that the conduct of the respondent in advising with Elmore was any more or less improper. Elmore went to him, told him all the difficulty that existed between Craft and his wife. He replied, if that can be proved it is sufficient ground for divorce. Mr. Elmore says to him, he has applied once in Judge Stowe's circuit; but Judge Stowe, discovering collusion between the parties, had dismissed proceedings and refused the divorce. Now then, he had been advised as to the testimony and as to the facts on which that application had been based—facts which had been dismissed by one of the Judges, on the ground of collusion. Now, will any man, who regards our judiciary as the safeguard of our rights and liberties, say that it is proper for a Judge, after having been told that a cause had been dismissed on the ground of collusion, to say that the testimony is sufficient and a decree ought to be granted? If this be so, I ask what safety is there in judicial determinations and decisions, if the judgment is to be reversed by the judgment of another Court in that summary way, upon the same application and the same statement of facts, and the bill which is dismissed in one circuit, a Judge entertains in another; if the bill in one circuit dismissed on the ground of collusion, is entertained in another by the Judge, after being advised of that collusion, and he goes on and advises the proceeding. If this is not improper conduct in the Judge, I do not know what is improper conduct. He advises him to retain counsel, and then Elmore goes and takes testimony. The testimony, by law, is to be directed to the clerk; nor can it be examined by the Judge in any other way than while sitting as a Court, though the clerk can order it to be opened. The testimony was taken to him in Milwaukee. He there opens it, he there reads it, and passes judgment upon it, and informs Mr. Elmore that, undefended, uncontradicted, it is sufficient grounds for a divorce.—Now then why that judgment? Why, it is a part of the former conversation, growing out of it and connected with it. He had advised the commencement of it upon the statement of fact which was before him, on a former occasion, and on the depositions which he pronounced to be sufficient. If that is the manner of proceeding in the second judicial circuit, if that is the manner of dissolving the marriage contract, why, there is no necessity for the provision in our constitution, prohibiting the legislature from granting divorces. It was thought to be a wise provision to protect the marriage contract, to preserve it from the improvident action of the legislature, to take away from them the power of granting divorces, to stop log-rolling di-

vorces. They had been granted again and again, and it was said, unjustly granted. Men and women were divorced here without the parties knowing it; and for that reason the provision was inserted in our constitution, to prevent the dissolving of the marriage contract, and the further continuance of this loose proceeding. And yet, in the second judicial circuit, the Judge passes upon the weight and effect of testimony. The testimony is taken *ex parte*, then it is submitted to the Judge, and then if, in his judgment, it is sufficient to grant a divorce, the marriage contract is dissolved, I was going to say, without even the formal interposition of the Court. It was prejudged, it was a foregone conclusion, that Mr. Craft was to have his divorce.—The judgment was passed in hisr ooms in Milwaukee, and that too, as we have a right to infer, by collusion between the parties, because one application had been dismissed, and another one was entertained upon the same grounds, and a divorce granted.

Then we come to the Wyman case. It is in testimony here by Mr. Wyman, in relation to that case, undisputed and uncontradicted, that he had the conversation with the respondent; that he either exhibited to him affidavits or talked with him in relation to affidavits which had been sworn to as grounds of application for a divorce from his wife. The counsel of the respondent, say that no credit should be attached to that testimony. They say that Wyman is not to be believed. I see no reason why Wyman should not be believed. He told a straight forward story, I am sure. True he could not give the dates. He remembers, however, the substance of it. He swears positively to the fact that he had the conversation; that the Judge told him that there were not sufficient grounds to grant him a divorce, but that his purposes could be answered just as well, because his wife was about to make an application on the ground of extreme cruelty, and he would grant a divorce which would free them both from the obligation of the marriage contract.

The specification goes farther, and says he had an indecent interview at the house of Mr. Seymour. Well, whether that interview was decent or indecent, I will not now stop to say. The manner in which Seymour smuggled the Judge into his chamber, away from the sight of his wife, avoiding detection, taking him there in the night, without the knowledge of his wife, might warrant the idea that it was indecent conduct on the part of the Judge. He was smuggled in there. Seymour carefully shut the door—left the outside door open so he could come in without being detected. He did not wish his wife nor Mr. Ingham to know it. He had told him he wanted to see him on some business at his house. Well, then, the conversation between the respondent and Mrs. Wyman down at Seymour's house, shows that there was collusion. They might not have advised their counsel that they had agreed upon a divorce, but it is sufficient to satisfy my mind that the Judge of the Second Judicial Circuit was the means of conveying the information between the parties that they could have a collusive divorce—that he was the instrument who brought that proceeding about, and it makes but little difference whether they talked it over by themselves or arranged it by their request. Then that divorce—trace it all the way through, follow it to Milwaukee—the order for a hearing in the handwriting of the Judge—the decree in the hand-writing of the Judge—the testimony enclosed to him—the divorce granted without any notice whatever, served upon the defendant to appear—a notice served, perhaps at the time of taking the testimony, but no notice served upon him at the hearing of the

case—the decree granted in that case without any jurisdiction whatever—all this, in my mind establishes collusion. There was an order entered for taking testimony before Mr. Geo. B. Smith, but no order entered for the appearance of the defendant, and under our old Territorial statute, instead of serving him with the process of the Court, it was to be an order for taking testimony. Yet nothing of that kind was done. The proceeding was taken from the county of Dane, where both parties resided, to the county of Jefferson, and from there they were again started to the city of Milwaukee. Why was that done? Why, we can infer no other cause for it, than that it was part of the transaction, that the divorce was to be granted which they had agreed upon, and it was to be a divorce releasing them both from the bonds of matrimony. Now it seems to me that this is trifling with judicial proceedings, when a Judge comes down from the bench and talks with suitors about proceedings commenced, or about to be commenced in his Court; it seems to me that he trifles with the rights of his neighbors, and above all, in cases of divorce, that he is trifling with the marriage contract.

I have now spoken of all the specifications which I intended to comment upon, and shall detain this Court but a short time longer. I did not intend when I commenced, to occupy much time. I see no necessity for taking any further time. This case is to be closed by the counsel on the part of the managers, and it will be useless in me to spend the time of the Court, in going over matters which he will, in all probability, go over again. It will be useless repetition, and unprofitable to the case. I have but one remark to make, and then, so far as the managers are concerned, and their requirement of me is concerned, I shall leave this cause to the decision of the Court. And that remark is this, may it please the Court: From the testimony which has been adduced here, I draw this general conclusion, that the respondent—the Judge of the Second Judicial Circuit—has so acted and so conducted himself in the exercise of his office, as to unfit him for the position of judge; that his conduct has a tendency to degrade, and has in fact degraded the character of the judiciary of our state; that he has not faithfully, and to the best of his abilities, discharged the duties of his office; that he has been partial; that he has violated the laws of the land; that he has been arbitrary; that he has administered justice for the purpose of rewarding his friends, and punishing his enemies; that the people of the second judicial circuit, that the people of this State demand, at the hands of this Court, his removal from office. It was said in the opening of the cause, that upon this issue depended the credit and character of the State; that either the State was to suffer by the judgment of this Court, or the respondent must suffer; that if the respondent should be acquitted, the character and dignity of the State would be lowered; that if he should be convicted, the purity of the judiciary would be vindicated, the character of the State elevated, and the virtue and honesty of the judiciary placed upon a firm and reliable basis. We leave it to the Court—we ask them to give such a judgment, as upon their consciences they can give—to perform that duty in justice to the State, in justice to the respondent, and in justice to themselves. And with that the Assembly will be satisfied.

Mr. President, I have done with the case.

AFTERNOON SESSION.

CLOSING ARGUMENT OF E. G. RYAN, Esq.

Mr. PRESIDENT:—The duty now devolves upon me to close the argument on behalf of the prosecution in this case; to close, as I understand the arrangement to have been made, the whole argument of the cause.—I am not, Mr. President, in the habit of making apologies; but I feel it due to myself to state, that in what I shall endeavor to say this afternoon to the Court, on the subject of this impeachment, I labor under great physical disability, and I know that I shall satisfy neither myself, nor those who desire to hear me.

Mr. President, I appear here as the counsel for the Assembly of the State of Wisconsin. In the defence which has been made, almost nothing has been admitted; and among other things which have been questioned and sneered at, has been my right to appear here as the counsel of the Assembly. The learned gentleman who in a good cause *is* learned and *is* able, denied that there was a precedent for it. And when he saw smiles of denial upon our faces, he said there was *hardly* a precedent for it.

Mr. President, I take it that the Assembly of the State of Wisconsin, when it appears as a suitor in this Court, has the same right to employ counsel as any other suitor in any other Court; and when the gentleman said that it was an innovation in this cause, he said what the precedents do not warrant; he said what the precedents contradict. Mr. President, not by the mere authority of the Assembly in this cause, but warranted by the authority of the precedents in such cases, I appear here as the counsel of the Assembly of the State of Wisconsin. In the matter of this impeachment, the Assembly represent the sovereignty of this State as prosecutor. In the legislative business of this Legislative Assembly, neither house represents alone the sovereignty, the majesty of the State; but in the matter of this prosecution, the Assembly represent the whole sovereignty of the State and prosecute here on behalf of the entire majesty of the people; and this Court sits here in the right of the State, in judgment upon their prosecution; and representing the Assembly here, I claim as its counsel to represent the entire sovereignty of the people of this State in this Court, as much as any advocate in any court can represent any client; and, standing in that attitude, what has been my reception in this Court? Not from the court—but what has been my reception from those seats, now significantly vacant, (pointing to the seats of Judge Hubbell and his counsel who were not present.) My right to appear here has been questioned, and not only have the Assembly sitting upon the other side of this Capitol, representing the majesty of the people, been sneered at, been impeached in the name of this defendant; but I, their humble counsel, a mere voice, a mere mouth piece in this case, have been assailed, have been threatened; and we have been told that the people of this State believe that not Levi Hubbell, Judge of the second judicial circuit, but the prosecution in this case, are upon their trial in this cause. Who are the prosecution?—The sovereign people of this State in all its length and in all its

breadth, as represented in their sovereign capacity upon the other side of this Capitol; the Assembly of this State—trusted, and trusted alone by the constitution of this State with the power of impeachment; their honorable Managers representing their Constitutional power and performing their Constitutional duty in this Court; and last and least of all, I their humble counsel—*we* are upon trial, not Levi Hubbell, Judge of the second judicial circuit! And what are we here on trial for? What is the charge against the sovereign majesty of the people? That they have dared to arraign Levi Hubbell here for his judicial corruption. What are the Honorable the Assembly here upon trial for?—That they have dared to call Levi Hubbell to account. What are this committee of Managers who have discharged their duty in honor upon trial here for? What am I upon trial here for? Who is the delinquent here by the proofs in this cause? Who is the criminal here? Whose character is upon the rack of proof? Sum up the whole of this cause, take one solid concentrated view of all the truth and fact here, and tell me whose heart is stained with guilt? In whom does this evidence bare to the world a perverted mind and an unclean heart? Aye, who is upon trial here? Is it that a "little brief authority," is it that a little popularity, an accidental, perverted, vicious popularity, a popularity which is done and ended, dead and buried, lifts a criminal above accountability, prompts him to turn in vindictive threats upon his constitutional accusers, to impeach the authority of the people, the constitutional authority of the land, and turn like a dog to bite the hand that fostered, raised and fed him, when it is raised to chastise him? And we are to fall! Yes, we can not withstand it! A tornado of destruction is to overwhelm us! There is in God or man, no salvation for us. 'They shall fall.' That is the emphatic use made of the future tense, by the counsel. And what is this tornado—the threat was passionate and vindictive, but vague and shadowy—what is this tornado which is to overwhelm the Assembly, their committee and their counsel? Is it Lynch law? Is *that* law to arise in this land at the bidding of one of the Judges of this land? Is Lynch law to rise up to shelter him because he is proven to have outraged the ordained constitution and law of the land? Is it invoked here because by the spirit of no other law can he escape the judgment of his guilt? Is *that* the threat? Or what else is this tornado before which we must fall? Is it assassination by the bullies who surround this defendant? Is it perjury which is to follow us into his corrupt courts, with corrupt judgment following upon it, to destroy us before God and man, to sweep us from the face of the earth? Or is it a tornado of opinion only? Whence does it come?—Where in this broad state is that voice heard from? I will tell you, and I will tell you plainly; and I wish the counsel was in his place to hear me. It is imported here into this Senate chamber from the dram-shops, the brothels and the hells of Milwaukee.—That is where it comes from. It is the voice of corruption, mourning for its chief. It is the voice of vice mourning for its champion. It may be too that it is an exaggerated echo in this Senate chamber of the fainter orgies of that club which Byron Kilbourn *would* denounce, and for denouncing which he could receive no favor at the hands of the circuit Court of Milwaukee County—the club of innocents, the singing school, the sewing society, or whatever else it was the defendant compared it to.

But, Mr. President, come from whence it may, this threat of destruction is not without its significance. What defendant ever before came into a court of justice, arraigned for his alleged delinquencies, and dealt out such threats as these; that because we prosecute and prosecute in honor, we are doomed—we are not merely on our trial, but are already doomed—doomed to some inscrutable destruction, hanging unseen above our heads, ready to overwhelm us at the bidding of this defendant. Is the destruction of accusers, prosecutors and judges, his whole defence? Does the living truth of this evidence, leave no other defence open to him? Unable to defend, is he driven to assail?

But, Mr. President, if this threatened tornado be a tornado of opinion, our impressions of the public judgment are far different. *Our* information coming from a different quarter; our information not coming from the haunts of those who hold an interest in corruption, nor from the dens of troglodyte vice; *our* information coming from the constituencies of the Assembly which we represent, living under the free charter of God, sympathising with right, abhoring wrong and speaking freely what they think, is far other, far different. We believe that throughout the length and breadth of this State, there is one unanimous sentiment of guilt. We believe that these facts have gone abroad. We believe both by information and upon our trust in the sanity and integrity of the popular judgment, that there is one universal conviction of the guilt of this defendant; but it is not a mere conviction of his guilt growing out of and springing from this testimony, impregnated and growing into being hour by hour and day by day, as this testimony has gone before the community, it is not a simple conviction of guilt; but it is a conviction accompanied by a morbid apprehension, that the guilt which is proved will escape. And this is not an unnatural fear. The history of this cause, the evidence taken down and reported here and sent abroad through this State does demonstrate, if human testimony can demonstrate anything, a monstrous corruption of the administration of justice. It is a natural fear. It is not a mere idle fear, that he who is so familiar with all the appliances of perversion and corruption, he who has corrupted justice so long as a Judge, may succeed in corrupting or perverting justice when he is a party. The example which shocks the popular conscience, could not help alarming the popular love of justice.

Mr. President, I have asked what this tornado is. I have asked whence it comes. I ask whom does it threaten? Does it threaten that Assembly? Does it threaten these, their Managers? Does it threaten me, their humble counsel? What is the purpose of hurling that threat at us? Which of us is it expected will flinch from the performance of duty? Is that Assembly to be threatened from its self possession, from its sense of public justice? Has this Committee shown a craven spirit here, which would justify the hope that they could be frightened from their delegated duty? Have I shown any disposition here against which a threat could be supposed to avail? Who here is expected to shrink from our duty? I do not know what that vague threat is meant to convey. I do not know whom the gentleman meant, when speaking in the name of this respondent, he pointed at our table and said we would meet when we went forth, a tornado which we could not resist; yes, before which we must fall. I will not degrade the Assembly of this State, the constitutional representatives here of the people, prosecuting their unfaithful servant, by vindicating them from the cow-

ardice of shrinking from their constitutional duty, for a threat. These, their Managers, need no defence; their conduct here places them beyond defence. For myself, I have no defence against such a threat. I rest all defence upon my discharge of my duty here. I wish only to say here to this defendant and to all his satellites, and, to use the classical phrase of his counsel, all his bull dogs, that I stand here in no fear of them. If their threats are for me, I set them at defiance. I may fail for want of ability; I may fail for want of strength; but no fear shall palsy me in my duty.—Threatened, I defy them. I have lived, thank God! in defiance of them; and I shall continue to live in defiance of them. If my fate could be determined by them, it would have been determined long ago. I would say to the counsel if he were here, that in my little experience of professional life, running back these twenty years, I have had no experience of that practice which is based upon peculiar relations with a pliant or corrupt Judge. I stand or fall alone. I have never cringed to any court. I have never played the sycophant to any Judge. I have never played the coward to any man in authority. And in this free land, if I cannot stand up and follow my profession independent of all favor, setting corruption at defiance; if in this free land, I cannot stand up as a citizen and hold my own rights in my own power; if I ever come to see such a state of things, when I cannot so live as a man and a lawyer, I wish to die; I would not live upon the face of the earth upon any such terms.

But I cannot believe, and do not believe, that it was to threaten that Assembly, that it was to threaten these Managers, that it could have been even to threaten so humble an individual as myself, that that tornado was announced. Was it indeed over our shoulders, over our heads, intended to threaten this Court? Our duty was mainly done. The little that remained to do, in the argument of this cause, was of small moment. To us the threat could only be vindictive. To this Court only, could the threat be suggestive. Yes, Mr. President, passing over our heads in vindictive passion for duty done, it was aimed at this Court as a suggested danger, in duty yet to be done; the responsibility of a just judgment on this defendant. This is the suggestion of this Respondent to this Court; one of the echoes of his own judicial heart in this cause, a fear of consequences. And if there were truth in the threat, if public opinion sided with this defendant, if popular indignation should follow his conviction, was this Court sworn to decide this impeachment upon the judgment of others, upon the judgment of the majority, upon the judgment of all men else? Or were you, Senators, sworn before the bar of God, to speak the truth upon these proofs before the world, upon your own consciences, as God will judge you by your own consciences? What, to the conscience of this Court, is the opinion of all the world else? Why announce that threat of public opinion here? Not to reach us, Mr. President; not to reach the Assembly; not to reach any of the agents of the Assembly, who have sided in carrying on this prosecution; but as I believe it from my soul, to intimidate this Court from its plain and known and obvious duty. Is that threat thrown only where it could be available? For it could not be available against the Assembly, who had accomplished their mission in this prosecution, it could not be available against the Managers; it could not be available against me; it was cast where only it could be available—at the heads and hearts of this Senate;—is that threat, then,

the end of all the paraded confidence of this defence, of all the hints of combination, of all the boasts that heads were counted here, have they all ended in an impotent and indecent threat; a threat, Mr. President, characteristically accompanied by a cringing appeal? It is the spirit of a baffled bully. It is the spirit of the wild beast, turned to bay at once a deadly fear, and a ferocity, surpassing the ferocity of its natural state. And that threat of destruction, moral or physical, political or judicial; that threat of indefinable ruin, being what it may, coming from whence it may, threatening whom it may, is filling the air of this Senate Chamber at this moment. It did not expire with the words which uttered it. They have breathed it into the atmosphere of this Court, and it abides here. It cannot be removed when it has done its office. It has a being in this cause, beyond the power of him who gave it utterance. None of us can exclude it. It remains with us to the end. It fills the air over our heads. It is an unknown and invisible weapon, suspended over our heads by an impalpable hair, in the atmosphere of this Court and of this cause; threatening in the language of him who brought it here. That threat can never be disentangled from this cause, it is a living part of it. With it above us and around us, all remaining duties in this cause are to be done. Let it be seen if any bleach, let it be seen whose heart bleaches from the duty of truth and justice. The threat remains; but, Mr. President, I have heard of evils sent forth on the face of the earth, which returned to torment the hearts which begot them.

Mr. President, I deemed it due to the Assembly, I deemed it due to their Managers, I deemed it due to this Court,—not having the pleasure of hearing the honorable Manager who summed up this case—to dwell thus at some length upon a most indecent threat which was uttered here. I say now, as I said in the beginning, that the Assembly are here in no passion, in no malice.—The Assembly are here to prosecute in honor. They stand here in the dignity of this State. They prosecute in the name of public justice. They seek nothing but the vindication of the dignity of this State. They ask no more of this Court, than they do.—They ask this Court, as they prosecute in honor, to decide in honor. They invoke this Court in the name of public justice, for the life, for the being of public justice, which they believe to be at stake. They invoke this Court to decide upon their appeal, without fear, without favor, upon the plain, obvious, naked truth, by the eternal principles of holy justice. They invoke judgment against this defendant, because they believe the proofs fearfully establish his guilt in this cause. They invoke this judgment in the name of the whole people of this State, not only as the constitutional representatives of the people in this Court, but as the actual representatives of the people in this impeachment; because they believe that their views and judgment in this cause are the views and judgment of the whole people of the State; that in their strong convictions of the guilt of this defendant, the pulses of the popular heart beat with them.

Mr. President, asking this Court to decide this cause, upon the naked, plain, obvious truth, and to decide it in honor; asking no more, they will be content with no less; and representing the people here they say to this Court, that the people of this State asking for no more, will be content with no less.

Mr. President, if the views which have been submitted here to you by the Honorable Manager, who has addressed you, if the views which I shall endea-

vor to submit be correct, the judgment which we ask at your hands is invoked not only in the name of the people of this State, is invoked not only by the judgment of the people of this State; the sense of justice of the world expects it as a right at your hands. The moral judgments of the world are always right in the end, upon known truth. Passion dies, interest dies, party dies; but justice survives forever in the human heart.—Not only the living world around us, posterity also will read this trial. Posterity will in turn sit in judgment upon your part here; and if any weakness turns you aside from true judgment now; if any policy, or fear, or hope, or passion, pervert your judgment now; you draw down upon yourselves the judgement of posterity, you betray the hopes of your children in the good fame you owe to them, when all acting in this cause shall have passed for ever from this place. The living world around you and the coming world who will succeed you, alike invoke you to a judgment of t is defendant, above all bias, influence, policy or cowardice. They will be content with no less than we.

Mr. President, may I hope the indulgence of this Court, to turn aside for a few words from the legitimate considerations of this cause, to a subject forced in here and upon which I think I may say that I seldom speak. I am, as I have said, not an actor, but a mere voice in this cause. My personal position in it is a very immaterial matter. But it has been dragged in here and largely commented upon and become a matter of some interest to myself. My excuse for alluding to it at all, is its connection with the cause. To other attacks here made upon me, I shall make no reply. Mr. President, it has been said that I am the life and soul of this prosecution. I would to God that this prosecution had a stronger life, an abler soul; and I believe it has. It has been said that this prosecution never moved without me. It is of no consequence to this cause, or to the public, but it is of some consequence to myself, to say that I never volunteered in this proceeding.

The cause brought me, not I the cause. I came here when this subject was under investigation in the Assembly, not a volunteer, and not until I was asked by the committee of the Assembly to come. It is of little consequence to this Court to know, but it is of some consequence to me to state that I came here to attend this trial, when I was sent for and retained as counsel for this State, and not before. I never appeared in it here or elsewhere as a volunteer. But if it is meant to be said that from the beginning and before the beginning of these proceedings, I wished well to this prosecution; if it is meant to be said that with the whole strength of my heart and soul, I sympathize with it, pray for it, hope for it, labor for it, I am proud before God and man to say that I do. If that be responsibility, I glory in it. If responsibility is wanting, I am willing to take it. And so far from being threatened by all that has been said here, to shrink from such a responsibility; if I could assume it with truth, I would that I could say I was this prosecution. If it were true, if I could re-echo the gentleman's words and say I was the life and soul of it, Mr. President, I would hold up my hands before heaven and earth and glory in it as the crowning virtue of my life; and so far as I have responsibility for it; so far as I am identified with it, I do not care what the result is here; I do not care what the passing judgment of these days is. If I do notlive to see the day, my children will live to see it, when they will be proud that I stood up here this day aiding,

advocating, hoping, praying for this prosecution, and identified with it. If I do not live to see the day, my children will, when no apology will be uttered by them that love me for my part here; and when those who volunteer to resist this prosecution, who stand up here as the friends and apologists of this defendant, in all that has been proved here of justice perverted and corrupted, will be unambitious of the world's memory of their position now. If all these threats, if all these assaults, if all these denunciations, mean that the defence want a victim, that they must have a victim, I do not know upon whom their malignity rests in the chiefest degree, whether upon the Assembly, upon the Managers, upon myself or upon the original complainant to the Assembly; if the vindication of the rights which are here asserted needs a victim; if they want a victim and seek one in me, I am ready; I tell them that I stand here prepared for that destruction, that I do not shrink from their hostility, I will glory in it.

I feel a distaste, Mr. President, to speak thus of myself. When this cause began, I could not dream that the moment would ever come in its progress, when this Court would have to listen to one word about so insignificant a person matter as myself. It has been forced upon me by assaults, reiterated throughout this trial. I have said and shall say far less in my defence, than in the other side have done me the honor to say in assailing me. But, Mr. President, there is an impropriety and indecency in these assaults far beyond the personal or professional discourtesy. In this cause, I am something more than myself. In this Court, I am the voice of the Assembly of this State. What member of this Court, who in this Senate Chamber, believes what has been insinuated so broadly, that I may say it was said, that the Assembly of the State of Wisconsin, acting in their constitutional capacity and upon their constitutional responsibility, acting in the face of the whole people of this State, each man in the face of his own constituency; acting upon a solemn subject, delegated and confided to them by the constitution; that the Assembly of the sovereign State of Wisconsin, were a tool in the hands of so humble, so insignificant, so powerless a person as myself? No! Mr. President, I am the servant of the Assembly here; not they mine; and whatever may be my insignificance here, whatever my weakness here, whatever want of strength and ability in me to present this prosecution may be here, the prosecution itself ought to lose no force from my weakness and can lose no dignity from my insignificance.

Saying, Mr. President, that I was the life and soul of this prosecution, they have said that this prosecution was urged on by malice. I wish to say once for all, that I have not, that I never had a personal difficulty with this defendant. I look upon the *man*, so far as I have power to separate the man from the Judge, I look upon the man and have always looked upon him with simple disgust. But I abhor corruption; I was bred and educated to abhor corruption; and so I have a deep abhorrence of the *Judge;* abhorring him, I abhor only the corruption I believe to be in him. But to assail me in my position here, it is said that at the last judicial election in our circuit, I supported him with vote and voice and pen; and the reproach that I did support him in that election, is hurled at me in this Court, and I feel it. They say that the subject matter of this trial was upon trial in that election.—Why, then, did they say, if I am the soul and life of this prosecution, that that election *was* this

prosecution, and yet say that in that election I supported him with vote and voice and pen? The counsel is not here. If he was here I should ask him if no bulls were ever uttered out of Ireland. But I tell this Court, and I tell it in proud approbation of my course in that election, that I spoke no word; I wrote no line in defence of this defendant—not one; never, under all its excitement· I may have been mistaken, I may have been misled by personal distrust, instilled into me by another gentleman; but I believed it to be a choice of evils. And, although I did give my vote and support to this defendant as a choice of evils, I refused to sully my tongue with one word spoken, refused to stain my pen with one line written in his defence. The gentleman says it was a heated election, and that all men's passions were roused; and it is true. My own brain was heated, my own heart was heated, my blood was aroused,—and it never was the coldest,—but with all the heat of my blood and brain and heart, and I say it proudly to-day, I spoke no word, wrote no word, in his defence; but I said *this* hundreds and hundreds of times; that it was a choice of evils, and that for my single self, I preferred a blackleg to a Jesuit. It is said here that I contributed to the result. It may be that I did. If I did, Mr. President, may God forgive me, for I cannot forgive myself.

Judge HUBBELL. It was very little that you contributed.

Mr. RYAN. Little or much you were glad then to accept of such support as I gave you, glad to have it on my own terms; glad to have it, when any honorable man would prefer the bitterest hostility to the indignity of such support as I gave you. If such support as mine proved treason to the public, it was no flattery to you. And I am glad here now to atone for it.

Mr. President, it was stated here in the opening of the gentleman opposed, that this prosecution was an ignominious failure; and it was stated in his closing argument that the defendant was certain here of unanimous, or almost unanimous acquittal. It was said that the defence was sustained here by the unanimous judgment of the public. It is boasted here that this defendant is sustained by his own consciousness of right. It is said here that every thing which can sustain the defendant under such circumstances, is sustaining him here; his own and the public approbation, and the prophecy of his own heart of a unanimous and honorable acquittal. It was said that this trial, that the evidence in this cause, had demonstrated this man's innocence, to those who doubted it before; that the ordeal of trial had demonstrated his personal and judicial purity to the world. Why, then, if thus sustained by the universal judgment of the public, by the foreshadowed judgment of this Court appointed to try him, by his own conscience; why, thus perfectly sustained and coming pure out of the fire that had tried him, with the angels of heaven to watch by him here in the furnace in which his innocence is only proved; why kneel to this Court in cringing appeals? Why, Mr. President, had I yesterday to hear the same pathetic declamation, to see the same mockery of tears, that I saw and heard upon the trial of Radcliff, the Murderer? Why upon this trial of a Judge who stands upon his innocence, of a judicial officer who here says that he is innocent, whose counsel boasts that he is innocent, who boasts that all the disclosures here have but tended to demonstrate his innocence, to redouble the faith of his friends of his innocence and to convince even his enemies of his purity; why, if all this security of innocence was here, were the privacies of

domestic life dragged into this Court to move the heart of justice; crying craven, weeping this Court to have compassion upon the innocent victims of his guilt? It was bad taste; it was bad feeling. And knowing the learned, eloquent, and able counsel as I know him, I cannot think it was the prompting of either his taste or his feeling to do it.

Judge HUBBELL. It was not my taste and you know it.

Mr. RYAN. I know the gentleman. I know the learned counsel well. I ought to know him well at this time of day; and I do *not* believe, when he said in presence of this Court, that he stood here not merely as counsel, but that he stood here as the defendant's personal, and judicial friend,—I do *not* believe that he would of himself have cringed to this Court, that he would have invoked the mercy of compassion for women and children, the dead and the unborn, to mitigate the judgment of man upon man.

Mr. President, I once said of the plea of this defendant that it was the felon's plea.—I have heard nothing to drive me to recant that phrase. Such appeals to compassion, such appeals winding up and crowning the whole argument for the defence, are the felon's last hope, following in order the felon's plea. They indicate a weak cause. They betray a shivering conscience. They are familiar to every one who is accustomed to the arguments of counsel in desperate cases of crime. It is the fate upon this earth, and it always will be on this earth the fate of the guilty to involve the innocent. He who sins upon this earth, he who calls down the vengeance of the law upon himself, sins not only against the law, not only against morality; he sins too against the affections.—There is none so poor, there is none so outcast, there is none so degraded, there is none so steeped in guilt upon this earth, that some human affection does not cling around and depend upon him; and when crime is committed, it is not only treason against the majesty of the law, it is treason against the majesty of affection. It is a hackneied expedient of counsel in desperate cases, to invoke the domestic ties which will be bruised and broken, violated and severed, by the conviction of guilt. It is a trick as old and as common as desperate criminal defences. And when the pathetic voice of counsel cannot invoke compassion for him who is guilty, it invokes compassion for those who are not guilty, but who will suffer by the conviction of his guilt. I have to say here that it is no fault of ours that I have to say these things. Not we dragged the innocent in here. I listened to the appeal, and no human heart could otherwise hear it, I listened to it as all listened to it, and as it deserved to be listened to, with deep feeling; but it was not our duty, it was not our part, it is not the duty nor the part of this Court, to follow out such consequences of conviction here. * * *

This Court, these prosecutors, prompted no crime which is alleged against this defendant. We bound no innocence to guilt; and whatever be the result of this trial, no broken heart can cry out against us or against this Court. No bruised spirit can lay its sorrow upon our heads. It is guilt, not justice, which wrongs innocence; and we can only say here that no such appeals as those, provoke us to any retaliation. We all here pray God to bind the bruised heart; but we say too in the name of the Assembly, in the name of public justice, *pereat unus, ne pereat respublica.*

Mr. President, they say that in all this array of testimony, there has been no array of defrauded suitors before you, no parade of those who had been wrong-

ed and ruined by the corrupt and perverted judgments of the judge of the second judicial circuit; and they ask where, if there have been any, are all the suitors who have suffered by that wrong? I ask you, Mr. President, and I ask this Court, can all this history of judicial wrong have done no injury, can all this array of judicial wrong have ruined no hopes, desolated no homes, broken no hearts? I spoke in my opening of the universal reach and subtle penetration of the judicial power, which can penetrate into every home, which can overshadow every roof, which can disturb the peace and honor of every family which can reach the daily bread of all the children in every household of the second judicial circuit. Remember all this testimony, and say, are there no desolated homes there? Are there no broken hearts there? The ruined hopes, desolated homes, the broken hearts, the prostrate altars of domestic honor and happiness, have no voice here. *They* can *not* have a voice here. *They* cannot impeach. *They* cannot appear as prosecutors in this Court. But from them there goes up a voice which reaches—I was going to say, which reaches the Assembly—I trust in God it reaches far higher. From them there goes up a voice, and this impeachment has sprung from that voice. *They* have no voice here but the public voice. *They* speak in the public voice heard here. The defence ask who is prosecutor here. It is the prosecution of no one. I do not care who suggested the first movement, I do not care who took the first step. The spirit of this prosecution has been gathering and growing and filling the air of the second judicial circuit for years. It has been conceived by public wrong and nurtured by public suffering, until it stands here for justice, a potential being. It speaks with the voice of all the wrong and all the wronged of the second judicial circuit. In their right and on their behalf, proving *not* the injury to them, *not* the suffering to them, *not* the desolation, moral and personal of the second judicial circuit, but proving the wrong done itself, proving the mere doing of the wrong; in their right and for their wrongs, the Assembly prosecutes in this Court; and if the Assembly prosecutes with proof, this Court avenges with judgment. And it is in the name of those wrongs that I speak here in behalf of the Assembly. I cannot play the actor. I cannot shed tragedian's tears.—I could not have shed them for Radcliff.—I could not shed them for this defendant.—And I cannot affect to shed them here for all in our circuit who have been betrayed, wronged and ruined. I cannot invoke the mimic tears of tragedy for the victims of judicial tyranny and corruption. But I can feel for them; and shedding no tear, aping no actor, I ask this Court to hear the wrong of our circuit in my voice. I would to God this Court could hear in my voice, the power of insulted virtue and outraged right.

Mr. President, the counsel for the defence has said, that he did not claim this defendant to be a perfect man, that he did not claim him for a perfect Judge. He admits in his opening and again in his closing argument, that the Judge of the second judicial circuit has been guilty of many improprieties and many indiscretions; but he twice appealed to the peculiar character of the defendant which he assumes to describe to you; and says that those improprieties, those indiscretions grow out of the peculiar character and organization of the defendant. He tells us—and I wish to quote him accurately to the Court—he tells us that some Judges are cold, misanthropic, unsympathising. He tells us that such Judges can repel approaches and resist tampering. He tells us that in

them, the cold, misanthropic, the unsympathetic, this may be virtue. I ask this Court in indignant reply—is judicial integrity unapproachable, unsullied, to be stigmatized here as a want of humanity, as cold, proud, unsocial, unsympathetic, misanthropic? That is his own language, not mine; and I ask this Court can none but the hater of his race—for that I take to be misanthropic—can none but the soured hater of his kind, whose heart has no pulse beating with the common pulse of humanity, upon whose spirit the amenities and affections of society shed no sunshine, who stands aloof in cold and morbid distance from all that blesses life and civilizes man; can none but such, in the judgment of this defendant and his counsel, be blessed with judicial chastity? Is that the defendant's estimate of human nature and judicial virtue? Is that the verdict of his heart upon judicial faithfulness? Is that the defence made by his heart to his conscience, for all this array of easy judicial virtue? So much for the counsel's cold, unsocial, misanthropic judges in whom purity may be a virtue.

He tells us that the defendant is of a different organization. He tells us that the defendant is of a peculiar organization; open, frank, polite, generous, confiding, social, sympathetic, anxious to converse, seeking it where it is not sought, too sensitive to repel approach. He tells us that repeated solicitations met his client daily in his judicial walk; and that though conscious of the wrong, he was too polite, too easy, too accessible, to repel them. He tells us, that his friend could not assault those who so beset him, that he would not rebuke them; in effect that he had no moral power to repel corrupting approaches and corrupting influences. That is the counsel's analysis of the character of the Judge of the second judicial circuit whom he defends as his personal and judicial friend. I believe that his estimate is within the truth. A frank character that can repel no approach, rebuke no advance, resist no corruption! Mr. President, change the sex and what character has he described? Easy virtue has no sex. That character which makes a woman a wanton, makes a man an easy prostitute to every vice without a sex. Chastity of mind is as essential of man, as chastity of passion is to woman; and I say in bold commentary on the character given by the counsel to his client, that harlots are of both sexes and of all conditions in human life.

And so we find it here in the proof of Articles 10 and 11, and of some of the specifications of Article 9:—a Judge of easy virtue; approaching and approached; solicited and soliciting; lending a judicial ear to whispers which tamper with judicial virtue; approaching and retreating by turns, with a rare mockery of judicial virtue on his tongue;—promising to set aside verdicts; hinting the vacating of judgments; suggesting settlements for his friends; dissolving injunctions before they are issued; chambering in private with jurors in the jury room; suggesting nolle prosequi's to distract attorneys, to favor his friend's friend, who was accused of the simple impropriety, the naked *indiscretion*—that is the word in this cause—of adultery; divorcing women and instructing them in the principles of divorcing, in sacred privacy; promising to bring on causes for trial, when the paper evidence on which they were founded was lost; tampering with the penal judgements of the law; when money was payable into Court, offering to receive part into his own particular pocket, instead of the whole into Court as required by law; advising suitors what course to take in order that he might help them to accomplish their ends; so solicited,

as a system, by his special friends, that they cannot remember the times or the causes in which they sought to prostitute his judicial virtue, and yet never met with repulse; refusing to hear argument in Court in order to keep his promise made in private; going through the mockery of securing the swindled dupe of his friend Cook—and remember that the Wm. Cook in that specification is the Wm. Cook of the Taylor letter, the colleague of Henry P. Hubbell in the Taylor letter, to whom it is suggested to assign the judgment. I feared that the peculiar connection of Wm. Cook with the defendant would not appear in this case; but that letter brings it a little out at least; going through the mockery of securing Cook's swindled dupe, and then himself making and deciding the motion that left that poor suitor without redress upon the face of the earth; all this is in the proof under the 9th, 10th and 11th Articles, and I will not dwell upon it in further detail. This is a fair generalization of what we have proved under these articles. And all this is said to be the incidental and natural conversation of the man with his friends. They say a Judge is not precluded from society; that he is not to be deprived of his humanity. No, Sir: I ask not to preclude him from society, I ask not to deprive him of his humanity.—But I tell him, that humanity is not vice; I tell him that virtue, true and upright virtue, may repel the approaches of vice; and in doing so, is far truer to humanity, than the want of it, which cannot repel them. Disguise it as the guilty conscience may, under whatever name of generosity, sympathy or social feeling. Vice, Mr. President, is prone to borrow the name and credit of virtue.—But virtue is perfect; virtue is self-sustained; virtue protects its own; virtue needs no excuse; and where virtue is, there is never embarrassment to repel the approaches of vice. I ask the judgment of this Court, then, upon Articles 9, 10 and 11. I ask the judgment of this Court, to proclaim to the world that they are a terrible array of petty guilt. I ask this Court to announce the judgment of morality in Wisconsin, that such an array of petty, retail guilt is inconsistent with innocence or innocent motive.—There is to be sure in these articles no one great lapse of virtue, no one great prostitution of judicial character; but there is a record running through this defendant's whole judicial career, through his whole judicial circuit, of judicial wantonness, not to call it judicial harlotry. The defendant's personal character is the first scape-goat offered to this Court, for this conduct, admitted, solemnly admitted twice before this Court to be indiscretion, to be full of impropriety. And I here ask this Court to say that the morality which saw no wrong in the interview with Mrs. Howe, the morality which received no shock at the interview with Mrs. Pope,—a morality not over sensitive nor sensible,—a morality which has no blush for all this array of acts of monstrous in discretion, reprehensible in themselves even though unattended, as they contend, with a bad motive; I ask this Court to say, whether this morality, admitted here without a blush, is the judicial morality of the State of Wisconsin? And this was all passed over as an attribute of the defendant's peculiar character. I have dealt with that. I do not know, Mr. President, but there may be characters so peculiarly constituted that crime cannot attach to them. I have heard lately, Mr. President of moral insanity; I have learned lately the doctrine of moral insanity, a new and pretty name for moral depravity; there may be characters so framed that crime cannot attach to them; and I suppose that this is the soul of the argument here. There may be moral obliquity which cannot see the right. There may be moral

obliquity which cannot see the wrong. There may be a moral organization in which right and wrong are mixed up in confused mazes, without power to distinguish between them. That may be moral insanity.

But, Mr. President, I have to say at once here, of all moral insanity, of all moral obliquity, which is set up as a defence for guilt that such moral insanity, such moral obliquity, comes not from God, but from the abuse of the constitution which God gives to his creatures; it comes not from heaven but from the abyss. It comes from the abuse of the faculties, and is not inherent to the use of them. The disease of a faculty is insanity; the disease of a propensity is guilt. And I have to add of this defence of peculiar organization, that, if it be true, as is avowed by his counsel here, that the Judge of the second judicial circuit is of that character, that he cannot avoid judicial impropriety, judicial indiscretion; if that is the best defence that can be made for him here, that he is of such a peculiar organization that he cannot avoid such things as are here charged and proved upon him, and is therefore not responsible; I say that the second judicial circuit has enjoyed that kind of character quite long enough and is entitled to be rid of it. That is a defence that he is so unfit for his office, that he is not to be removed for the abuse of it.

But the learned counsel finds a supernumerary scapegoat, to bear to the wilderness whatever he finds improper and indiscreet in the Judge's conduct, that his peculiar character may not be able to bear. It is said that the fault is not his, but the fault of the elective judiciary. That system, it is said, destroys the independence of the judiciary. It brings the Judge down to the level of the people, and accounts for their easy access to him. Mr. President, if the tendency of the system of elective judiciary is to corrupt judicial virtue, I have no fear to say in this Court, to say before the people of this State, to say before all men, to say always and in all places, that such being its tendency, it is an accursed system.—But I deny that the tendency of the elective judiciary system is to bring the Judge *down* to the level of the people. I would be well content, Mr. President, in this case, if the elective judiciary system had raised the Judge *up* to the level of the people. He who stands upon a moral level with the mass of the people, stands upon a high moral level. Few stand higher; and it is an insult to to the people, it is an insult to humanity, to say that the people brought the defendant in this case *down* to the level of these articles and specifications, to the level of the proof in this cause. I tell the counsel that if his client had ever by good fortune risen up to the moral level of the people, this impeachment had never been preferred, these words had never been uttered, and we would never have been in these positions at this moment. The moral level of the people is a high level. The gentleman sneers at the system which brought the Judge down to this level and says "if it needs a victim don't take him." I do not know that the system needs a victim. If it does, I know not where to look for one with more propriety and justice than here. I know not where to look for a better or a fitter sacrifice. But it is not the system which needs a victim. It is not the system which has brought this prosecution about; and if anything needs a victim here, it is the reproach which the judicial conduct of this defendant has brought upon the system. It is said that the elective judiciary system forces him to seek popularity, that he was, in the course of conduct exhibited in these proofs, "conciliating the favor of the people." I am using the very language of the counsel. And consider-

ing articles 9, 10 and 11, and the facts set forth there and the evidence given upon them, we ask is this the defendant's idea of the way to win the popular confidence? Is this his judgment of the people? Is this his conception of popularity? I have heard that word popularity so perverted, so abused, that I am sick of the sound in my ears. I ask this defendant to listen, and I ask this Court to listen to what true popularity is. And before I read it, let me say for myself, that specious vice may win an unhealthy and short lived popularity; but virtue only can retain a sound and healthy popularity. Let me read;—my memory is too poor to quote with accuracy what I remember best—too poor even to plagiarize with success from my own or other's speeches,—I have brought the book with me; let me read Lord Mansfield's views of popularity. "I honor the King and respect the people; but many things acquired by the favor of either, are, in my account, objects not worth ambition. I wish POPULARITY; but it is that popularity which *follows*, not which is *run after*. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not *do* that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands or the daily praise of all the papers which come from the press; I will not *avoid doing* what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can ininvent or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, '*Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam, putarem.*'"

That is the popularity yearned for by a great man and a great Judge. *That* is true popularity, honorable to the people who give and the favorite who receives it. *That* is the popularity of a man who truly reverences and serves the people. *That* is popularity worthy of an honest man's ambition. Popularity which is sought by cringing to individual vice, popularity which is sought by pandering to popular prejudice, a popularity which makes a Judge upon the bench, a pliant tool of every interest and every passion, or to use a western vulgar but significant phrase, 'every body's good fellow,' sickens me, however it may flatter this defendant. Mr. President, if the Judge of the second judicial circuit had trusted to human virtue, if he had courted popularity by seeking noble ends by noble means, popularity would have sought him, unsought by him; the people would have been spared this prosecution in their behalf, and they would have been spared this insult offered them by him who claims their favor; this insult, for it is an insult to say that he was driven by the elective judiciary to run after popularity and earn it by means which were not noble, not just, not pure, not honest. Their own prejudices or the flattery of demagogues may mislead the judgment of the people; but the popular heart is always true and just; and this defendant, if he has indeed sought to win the popular heart, has been misled by his own character; has mistaken the way to attain it, and has not attained it. I fear no threats of what awaits the prosecution here. I tell this Court, I tell this defendant and I tell his counsel, that in any sense of his having the public confidence, having the affections of the public heart, it is a grand mistake. That he may have popularity with those who like a back-door stairs to our Courts; that he may have a popularity with these who, as the evidence has shown here, could nudge him on the elbow, and by merely suggesting the names of parties, intelligently hope to influence

him favorably towards them; that he may have popularity with those who give it to him who runs after it and withhold it from them who deserve it but will not seek it, may be true; but they are few; and believe me, Mr. President, when I say again, that the popular heart is just and true, and that manful means are the only means to win the abiding trust and affection of the popular heart. And this defendant has never known the way to win them.

It is said again, Mr. President, that in the last canvass in our judicial circuit these charges were all published and discussed in the newspapers. I must say that that is a very great mistake. With the solitary exception of the unexplained record in the case of the State against Haney, not one of these charges, not a solitary one, figured or was known in the newspaper controversies of that canvass. The naked, unexplained record in the Haney case was published and commented upon. But with that exception not a solitary one of these charges was published, discussed or known in that canvass. And it is a significant commentary on the looseness and intemperance of assertion made here in argument on the part of this defendant, that very many of these charges against the defendant and I think the gravest and most damning of them, are founded upon the judicial conduct of the defendant during his present term of office and subsequently to that canvass, during which it is so handily asserted here that they were the subject of discussion. It is said that he was triumphantly *elected*. That will do to boast of *here;* but those who were in the canvass and those who achieved this defendant's election, know better. It is said here that these charges having been made public in that election, and he having been re-elected, his re-election operated upon these charges as a condonation. Mr. President, all the lawyers in this Court know what condonation is. I do not know whether the lay members do or not. To assert, that these charges having been made and canvassed in that election, operated as a popular condonation; is to say that the people knowing the prostitution of the bench, cohabited with their prostituted Judge and forgave him. And to say that these charges, if true, overwhelming this defendant's head with guilt and shame; to say that they were compounded for by the people, that they were forgiven, that they were condonated by a knowing and a forgiving people in the second judicial circuit, is to say no more or less than this, that admitting the Judge to be as the Assembly charge him to be, the people of the second judicial circuit require and desire no purer Judge; that the people of his circuit, knowing him for what he is here represented, have taken him back to their heart as their standard of judicial virtue. An insult, Mr. President, an insult to the sense and virtue of the people. Mr. President, he who condonates deserves his fate; and if it were true, that the people of our circuit condonated all this guilt, they would deserve their Judge. It is a slander upon the people of the second judicial circuit to say, that, knowing these things, they elected him and condonated them. The truth is, Mr. President, that these charges with the exception I have named were then publicly unknown. They were shrouded in the fear then and *still* paralyzing men,—the fear of judicial vengeance; the fear of judicial tyranny surrounding us at that time, and to-day gagging the tongues of witnesses upon this trial, closing the fountains of truth in this Court as we have seen it; the fear of that judicial vengeance which comes bullying in this court and threatens all engaged in the prosecution of this case or in the conviction of this defendant; and these charges were so shrouded in that fear, so shut up in the timid con-

sciences which were the witnesses to them, that to the public they were unknown.

Mr. President, this defence as developed here, is in a great degree a technical defence. The whole Court will have perceived, that when we were giving our proofs, point by point, everything was disputed and almost nothing was admitted for truth, till it was proved beyond dispute. For example, it is now avowed beyond a question, that the bond sold to Mitchell which we produced and have here in Court, was the bond received from the city of Milwaukee, in payment of the Taylor judgment. You remember how the bond was defaced with holes punched through it, when it was cancelled. It was difficult to make out what that bond was, and what was its amount. They disputed it at the time of its introduction, and drove us to the proof of it step by step. They said that I could not say it was a $1200 bond. They maintained that I could not read the word or figure 'twelve' in it. But when I was able to show that it is not only a bond for $1200, but also the identical bond of $1200, paid by the city and sold by the defendant, they avow that they always knew that it is the identical bond received in payment of the Taylor judgment, and sold by the defendant to Mitchell. And so on, point by point, what they are now compelled to avow as the truth within the defendant's knowledge, was disputed when we were giving the testimony. I, therefore, say that, as this is a technical defence, in matter resting on technical objections to our case, so it is a technical defence in manner, resting upon our inability to prove the truth. It is my duty and my necessity to add something to what has been already said in the progress of the trial, on these technical objections to our case, before I can proceed with the examination of the testimony in chief.

The first of these defences, Mr. President, which covers a large part of this prosecution, but not the whole of it, is, that the defendant is not subject to impeachment for acts done during his former term of office. That question was started, sir, in the beginning of this trial.

Mr. KNOWLTON. It was not argued by us.

Mr. RYAN. I apprehend it was argued by Jonathan E. Arnold. I cannot say whether or not he is included in "us."

Judge HUBBELL. I will relieve the gentleman from the necessity of discussing that defence. I rejoice that this inquiry has gone the whole length of my judicial course.

Mr. KNOWLTON. The point was raised by me, but was not argued on our side.

Mr. RYAN. You are mistaken, Mr. Knowlton. Mr. Arnold argued it more than once, and his arguments are before me here in print, as reported.

Judge HUBBELL. It was not raised or argued by my desire.

Mr. RYAN. Well, when one of the counsel disclaims what the other says, and the respondent disclaims what they both say, I will add but little on the point. In the first place, Mr. President, I say that the authorities are with us. We produced them and read them to this Court, showing that impeachments have reached and punished offences in office, even after the officer had ceased to hold office. We have therefore no doubt that so far as authority goes, the authorities are with us. The question was settled by the authority of this Court, upon the cases cited by us, and the argument of both sides. This body voted upon the question and decided it; and yet in the opening and close of the

learned counsel who is not now present, he most certainly argued the point. I see, happily arriving precisely in the nick of time to support that argument in the decision of this cause, in advance of all the other newspapers, in advance even of the telegraph, a statement in a Milwaukee paper which is famous in all things else for being leisurely behind the news,—that this question has been decided in New York. It follows an article, in that paper, assailing this impeachment, an article insolently speaking in the name of the people of this State; and tells this Court that the judiciary committee of the Assembly of New York had decided this question in the opposite way, referring by way of express contrast, to the action of this Court. Mr. President, I utterly disbelieve that rumor. So far as authority can settle the law of impeachment, the question is settled the other way. This rumor comes from a source which I discredit. It is very singular that it is found in advance of any other medium of news, in a paper never known to be within days of the news before.

Judge HUBBELL. It was sent to me by General King two days before it was published in that paper.

Mr. RYAN. I know nothing of that. I get my authorities in the books, my public news in the public journals. I have no whispers of private law or private news. I have no back door to the law or the facts. I speak in this of what I see and do not see in the newspapers. But whether that be so or not, whether this rumor be founded or unfounded, whether the judiciary committee of the Assembly of New York have made such a report or not, it cannot be authority binding on this Court. I contend that this Court decided rightly; and that the New York committee, if they have so decided, have decided without a solitary precedent in their favor and against every single precedent in the books, so far as I have been able to ascertain them. I had supposed, Mr. President, that there was a time when questions of this kind would have been considered settled in this cause and determined by this Court. The only new point which was raised upon the argument last made, which was not discussed when the Court took the vote upon the question before was this. The counsel urged that his view must have been the intention of the framers of the Constitution, because that instrument gives a choice of punishment; removal, or removal and disqualification. He says that if the person to be impeached be out of office, then that judgment could not apply, because there could be no removal. In the first place, I have to say, Mr. President, that the judgment may be disqualification alone. If the person impeached is in office, removal must be part of the judgment; but if he be already out of office, it may be disqualification alone. The mere incapacity of removal, within the voluntary power of every officer, cannot preclude prosecution. No man having offended against the laws, no man having betrayed the trust committed to him in his official capacity, can defeat judgment by voluntary resignation; and if he cannot by resignation, he cannot by the lapse of his term. No matter when he committed the offence, the state is entitled to the judgment of disqualification. And the remedy of impeachment would be a poor farce, if it could be defeated either by lapse of time determining the term of the officer, or by his voluntary resignation. Mr. President, the policy of that judgment is this; when by the Court of impeachment any public officer shall be convicted of having so misbehaved himself that in the judgment of the Court, he is not worthy to be trusted with office again, a disqualification shall form part of the penalty of his offence, both as a

measure of safety of the State, and as a measure of censure upon the offender. This disqualification is alone, apart from removal, a fearful punishment to any man; an infamy; a degradation.—And the liability to it holds a wholesome terror over the heads of all in office, which mere removal is incapable of doing. Against removal the offender could hope in time and in party and in chance; but against perpetual disqualification, he can have no hope. And was this, the gravest part of the judgment on impeachment, deliberately trusted by the Constitution to the mere will of the offended? What would it amount to, if the offender had it in his power by his own voluntary act to discharge himself from that punishment, from all liability to impeachment whatever? Was it the policy of the Constitution, is that the counsel's understanding of the Constitution, to put the liability to political punishment for political crime, wholly within the power of the criminal? Mr. President, our Constitution is not such a fable. But that is not the only view to be taken here. This impeachment does not find the defendant out of office. This impeachment finds him in office;—not in another office, not in a new office; but in the same office by a new term. He continues in the same office. He never has been out of that office. There never has been one second of time from the commission of any of the acts charged here, to this very second upon the clock, when Levi Hubbell has not been judge of the second judicial circuit; and it is a mockery to say that he is not amenable here upon impeachment. It is a mockery to say that if at five minutes before 12 o'clock on the night of the 31st of December, 1851, he received a bribe, he would not be impeachable; but that if he received it five minutes after the same 12 o'clock, he would be impeachable on the first of January, 1852. A pretty question it would raise for a court of impeachment to decide in such a case, of an officer never out of his office, whether the violation of the duties of that office still held by him, was within his first or second terms in it, was before or was after the first pulsation of the midnight hour upon the clock. Would this court patiently sit here to hear such defence, and to say that the cause depended not upon guilt, but upon the status of the clock when the guilt was consummated? That is the question here in its ultimate absurdity. Mr. President, as I said, that question was before argued and decided here. I am embarrassed by the confidence of the other side, in again addressing the question to the court. I do not know whether to pass it over as a question settled, or to argue it as a question open. The court heard it discussed and upon a solemn vote decided it with us. But again in the subsequent argument for the defence, the question is again urged to the court and the court again entertained the argument. I do not wish to trespass upon the patience of the court unnecessarily; and I have feared to leave wholly undiscussed a material point upon which there can be a doubt in the ultimate decision of the court. Feeling, however, that these preliminary questions have occupied more time than they merit, I will leave this and pass on to another.

It is said here, Mr. President, that however wrongful or illegal may be these acts proved upon the respondent, we cannot convict him in this Court until we have proved a corrupt motive as a distinct, affirmative and self contained fact. That is not the law in this Court, that is not the law in any Court. The general principle of the law, Mr. President, is a very simple one. It is this: that every man is held responsible for the act which he wilfully does, the law assuming an intention to do that which is done. This is the common sense of mankind,

and is adopted as a fundamental rule into the law, because it is the common sense, the result of the common experience of mankind. What is our daily usage in the world? Do we not daily, in all the business of life, assume the motive to be to do that which is done, with all its apparent consequences? Who, in the common routine of life, stops to penetrate the conscience, to bare the soul in search of a motive?—Not thus, Mr. President, acts the common sense of mankind; not thus reasons the law. The law and common sense assume every man to be responsible for the act done by him, with all its direct consequences, leaving the motive between God and his conscience; unless indeed, he who is charged with the act can disprove the malice. This is the fundamental principle affirmed in the law in a thousand different applications and phases. The general principle is well stated by Mr. Greenleaf in his work on Evidence, under the head of conclusive presumptions. "Thus, also, a sane man is conclusively presumed to contemplate the natural and probable consequences of his own acts." This principle, to be found in all books, has perhaps never received a more emphatic annunciation than from the bench in the State of New York, from the lips of a Judge now in the Supreme Court of the United States: "Where there is no law there is no transgression;—where the law exists and the transgression is admitted, the intent follows as a legal inference." I might multiply these declarations and variations of the general principle ad infinitum; every tribunal acts upon it, for no human tribunal can penetrate the conscience and drag the guilty motive forth to light, as a fact independent of the commission of the offence. This is the philosophy of all criminal law; the law acts upon the fact of the offence, presuming the motive, unless the motive be affirmatively disproved.

Mr. President, when a difference arose between us and the other side, early in this trial, upon the announcement by them of the principle that an express intent must be positively proved, the counsel who opened this case for the defendant, in answer to my denial of his position, said that he would overwhelm me with authority. He said he would read authority which no ability, no argument could overcome. And what authority has he read? *The arguments of counsel*, the speeches of counsel arguing cases as himself, this was his authority,—no more, no less. These were the authorities with which I was to be overwhelmed, and not I only, but all legal writers on this subject. The counsel whom he quoted are certainly all great names; but it is the first time in my life that I ever heard the arguments of counsel quoted as authority of law. The gentleman might have quoted authority nearer in time and nearer in place. He might have quoted—I believe he did repeat in part, but not as a quotation,—his own defence upon the trial of Ann Wheeler,—a defence of moral insanity. The principal passage from the argument of Mr. Wirt relied on by the gentleman, in which that eminent man states the principle which is relied on, is this. (Here Mr. Ryan read at some length from Mr. Wirt, as quoted by Mr. Arnold.) Mr. Wirt proceeds to give the degrees and divisions of homicide. Mr. Wirt's name is a great one, but Mr. Wirt here mistakes the whole doctrine of the common law of the subject of homicide. I answer Mr. Wirt when he says, "then all killing would be murder," that at common law, all killing is prima facie murder, unless the circumstances of the killing proved, justify or excuse the killing or mitigate the crime to manslaughter; and every lawyer knows that I utter a well settled, well pronounced and unquestioned rule of the common law

on homicide. Prove the killing, and if there be express malice, it is murder of course; if no express malice appears, prove the act of killing, and the law implies malice; and it lies upon the defendant to disprove the malice, unless the proof of the killing itself disprove the malice. That has been the well-settled law of homicide for centuries, and I state it here to show to what desperate lengths counsel even as eminent as Mr. Wirt are driven *arguendo*. One eminent man mistates the law of homicide, and another gentleman of learning and ability quotes that misstatement as authority! I appeal to the legal judgment of every professional gentleman in this Court whether I have not stated the law correctly. Malice is of two kinds, express or implied.—If express malice appear there is an end to the question; it is murder with malice express. If no express malice appear by the proof, and if the proof do not disprove malice, then the act implies malice; and it lies upon the defendant to disprove malice, in order to reduce the crime to manslaughter. That is the common law of homicide, familiar as the alphabet of criminal law to every lawyer in this Court. Mr. Wirt knew it, none better; and he was simply misled by his zeal arguendo for his client. Upon that one mis-statement of the law, is founded the whole argument of Mr. Wirt. But I go back to the principle which I announced to you and which is the principle of the law—that every man is presumed to intend that which he does. If it be a mistake, if it be a misapprehension, if it be without purpose, without intention, then he is to disprove the motive, the intention; but the law assumes that he intends to do that which he does, and human law could make no other assumption.

Mr. President, I believe that there is indeed a tribunal where we all hope for mercy, where judgment will be given upon motive of the heart, not the act of the hand. God knows the secret of all hearts; and God judges all hearts. When we are before His tribunal, by our hearts will He judge us. Not the act only which is the outward manifestation of the inner feeling, but the conscience in which that inner feeling is hidden from us, is open to the all-seeing eye. Conscience, hidden and secret from us, is to him a crying witness; and by conscience, will He, in His Court, judge all acts for good or for evil. But that power he has not given to man, to judge of man; and where He sets up judgment upon earth His word tells us—"By their fruits ye shall know them." We have no other way to know each other. Man cannot penetrate the heart of man. Man cannot dissect out and produce the motive of man, as a surgeon would dissect out and produce the heart in which motive is hidden. We cannot demonstrate purpose, intention, motive, as things perfect, palpable and clear. We can only presume in our law, as we presume hourly in the business of life, that men mean to do that which they do; that men are rational beings, see the consequences of what they do, and seeing those consequences, mean to accomplish them.—And if any other principle prevailed in any order of crime, *then*, unless men would proclaim their motives, unless aiming at self-conviction, men would record their motives in evidence, no criminal jurisdiction on this earth could reach the heart of man and dislocate from it his corrupt motive; *then*, criminal jurisprudence would be ended upon earth.

But there are many branches in this case, Mr. President, to which this point of the defence cannot apply. There are violations here of known positive law. What motive is necessary to show such acts impeachable? Proving the violation by this judge of the statute which forbids him to sit in a cause in which

he is interested; are we to be obliged to prove a motive? And yet that is not only the tendency of the general argument, but that is the particular argument of the counsel. Is the understanding of this court to be insulted by an inquiry into the motive of the judge of the second judicial circuit, in that solemn mockery of justice, when he sat in judgment on the bill of Levi Blossom against the city of Milwaukee? Do you thus institute a philosophical inquiry into the motive of the thief who steals your property? If you find a man in your house at midnight taking your property from where you had laid it by for safety; if you find him escaping with it, and you follow him and catch him, do you solicit of him a disclosure of his motive; and if he denies a guilty intent, do you say to him,—"Sir, you have broken into my house in the night time and taken my property; sir, you have run away with it; sir, I have overtaken you and got it back again; sir, you deny a corrupt motive, and, sir, I am able to detect none;—that is your impunity, go your way in peace"? Is that the way that society deals with crime? Is that the way that men reason upon violations of positive law? Or is it assumed that the man knew the law, that he was violating it, and that he intended to violate it? Where, in the ordinary course of crime, do you get the animus furandi, but by the act of stealing? Where do you get the malice prepense, but by the act of killing? Where the fraudulent intent of forgery, but in the act of uttering? Where do you find the motive, the corruption, the guilt of human heart in all human crime, but in the act of committing the crime?—Where are you to seek the corrupt motive of judicial misconduct, but in the doing of the acts of judicial misconduct themselves? When we see a positive law violated, a positive law binding on the judiciary violated, in the absence of all apparent mistake, we say it was violated wilfully; that is the judgment of common sense and of the common law. When we see a judge violating a known rule of judicial morals, we say that he intended to do what he does, intended to violate the rule he knew to be binding upon him. We say the guilty motive is apparent in the act, and so says common sense and the common law. The gentleman says, and he read arguments to show it, that no judge is impeachable for error in judicial judgment. That is true. That is indubitably the truth; and yet in summing up here yesterday, he found fault with us because we had proved no writs of error, no appeals, no erroneous judgments. No man is impeachable for mere error of judgment; and that really was the principle relied upon in Judge Peck's trial. Judge Peck had exercised an authority or jurisdiction, which by the decisions was a very doubtful one. It was claimed in the argument of that cause by those who prosecuted that the weight of authority was against the jurisdiction, and by those who defended the accused that the weight of authority was for the jurisdiction. If Judge Peck did possess the jurisdiction, as matter of law, he was of course not impeachable for exercising it; and it was contended upon that trial—and I am not prepared here to deny—that if he exercised the jurisdiction, not possessing it as matter of law, but believing and misled by the authorities to believe that he did possess it, he was not liable for it upon an impeachment. That would be error of judgment. And when it was imputed to him that, whether he did or did not possess the jurisdiction as matter of law, he had abused it, then it was necessary to show a corrupt motive, to distinguish it from a mere error of judgment. And that is the application to the case of the arguments read here upon proof of corrupt motive. Far dif-

ferent is this case. The Assembly have presented this impeachment upon no exercise of doubtful jurisdiction, upon no exercise of doubtful power. The Assembly claim a conviction here upon two general grounds, which they allege here in these Articles and Specifications. The Assembly charge first, that this defendant has violated positive statute law, passed by the Legislature for the very purpose of restraining the judges of the state from all discretion upon the acts forbidden; and secondly, that he has violated rules of general human integrity, not enacted by statute, but binding with the force of positive law upon the Bench, which no judge can do without guilt, which no judge can do and plead a good intention in the face of the known canons of human morality. Upon these charges, we therefore claim two propositions:—first, that the motive, as an affirmative fact, need not be proved; and secondly, that the motive in all these charges and specifications is, in fact, proved by the surrounding facts and circumstances. As the counsel said, this is the defendant's moral defence:—not, in this aspect, denying the acts charged; not, in this aspect, denying their illegality; not, in this aspect denying that in the acts charged, the defendant overrode the law and destroyed it; not, in this aspect, denying that he did these things which he should not have done, and omitted to do those things which he ought to have done; saying, find my motive if you can, you cannot convict without it. This defence, such as it is, is really the main argument which has been made by both the counsel, both in the opening and closing of their case. Such a defence, Mr. President, is almost a *cognovit*. Such a defence is not made upon the commonest indictment unless the proof brings the charge home to the defendant. No lawyer, valuing the reputation of his client, will make that defence, when there is any other available defence to be made. He will deny the facts, he will controvert the proof, he will fight the guilty act; but if he cannot do that, if the facts cannot be disputed, if the guilty act cannot be denied, then he will shelter himself behind his client's conscience and say—"find the corrupt intent if you can; you have got the act, you have got the proof, let me see if I cannot gull you with the only position which can shelter crime from conviction." It is that Mr. President, no more, no less. It is a device, a quibble, to say to us:—penetrate his heart, to drag forth his motive. We leave his heart to God. We leave the judgment of his motive to God. It is easy for this defendant here, it is easy for guilt before any human tribunal, to stand avowing the known acts of guilt, but denying the guilty motive. It is easy to wear the mask of innocence and appeal to the hidden conscience for innocent motive. We shall not accept this defendant's challenge to penetrate his heart. We only deal with his known acts. He, the searcher of hearts, alone knows the conscience as a fact. We cannot descend into it; we cannot expose it to the light. We can only judge of the guilty motive by the guilty act. It may be that human justice sometimes errs, by assuming the intent from the act; but, Mr. President, far oftener does it err in the false mercy which is led away from justice by appeals like this. To the judgment of God we leave the secrets of this defendant's heart. He has told us to judge the tree by the fruit, the conscience by the act. We judge the tree by its fruits. We have produced the fruits before you; you have tasted them in all their bitterness, you have seen them in all their rottenness; judge ye the tree. It is for this Court to say whether the tree which bore those fruits, judged by those fruits, shall stand a monument of your morality, or shall be cut down, a monument of your justice.

The next question, Mr. President, which they raise is upon these Articles of Impeachment themselves. They question whether these Articles of Impeachment present matter of impeachment. I presume there is no member of this Court who does not know that during the past winter, when the Assembly were engaged upon this subject, the defendant and the defendant's friends called loudly for impeachment. It is a matter of legislative history, sir, that the first committee did not recommend an impeachment. It is a matter of legislative history that they recommended the removal of this judge by address. His particular friends in the house and out of the house, cried out "persecution, injustice." They said in the halls and purlieus of this Capitol, "address will be unjust, it will deprive the defendant of his defence; these are matters of impeachment, impeach him and he will vindicate himself. The defendant publicly challenged impeachment. This was the course taken by this judge and for him; and it was, I suppose, for I do not pretend to know it of himself, upon his entreaty that the prosecution was changed from address to impeachment. I can say for one, that I foretold then, that after crying so lustily for impeachment, this defendant would turn round when impeached, and say the true course was by address. Now, does any man doubt, whether this be matter of impeachment or not, that there is still enough in the charges to remove him by address! With what grace then does it come from the defendant here, who prayed for impeachment, to whom impeachment upon these very charges was granted as a boon; to turn around here and say—"these Articles are not matter of impeachment." It is true, that no insincerity in his course, no bad faith in his course, would make or unmake these Articles matter of impeachment; but it is a test of the sincerity of the argument; and the sincerity of argument has something to do with the weight of argument. The legislative history of this Impeachment ought to estop the defendant from questioning the sufficiency, as matter of impeachment, of any thing in these Articles.

I dwelt in the opening of this case upon the provision of the constitution in regard to impeachment for corrupt conduct in office, or for crimes and misdemeanors. I argued that impeachment lies for all corrupt conduct in office, and for all crimes and misdemeanors, whether committed in office or out of office; whether connected with the office or disconnected with it. I hold that same view now. One of the learned counsel criticised at some length what I took occasion then to say upon matter of impeachment. I repeat that language now If he had satisfied me that there was any inaccuracy in it, I would cheerfully retract it. But I repeat it now, and the authorities which were read here this morning by the able Managers, show that our definition of impeachable matter is correct: all wilful malversation in office; all wilful maladministration in office; all wilful doing of that which is contrary to duty; all wilful omission of that which is required by duty. As I said then, I say now—all officers may mistake, may commit errors of judgment; they may blunder and blunder to an extent to show them utterly unfit for the offices they hold; and yet they are not impeachable for mere mistake, for mere error of judgment. The conduct must be wilful to be impeachable. All matter of impeachment, whether in the omission or in the violation of duty, must be wilful acts. I will not now review what I endeavored then to answer in advance, upon the argument that these acts must be indictable. The authorities are all the other way. No impeachment that has taken place in America, has taken place for anything

indictable. They are all for offences not indictable at common law. The provision of the constitution seems to me so plain, so distinct, that there is no danger of misapprehension about it. It provides for impeachment for corrupt conduct in office, *or* for crimes and misdemeanors. If the construction of the other side were true, if impeachment lay only for crimes and misdemeanors committed in office, why not say so? Why not say for crimes and misdemeanors in office? But it introduces that term, which the counsel on the other side calls a moral term, "corrupt conduct," and as distinguished from it the known legal terms, "crimes and misdemeanors:" the one apparently limited to official misconduct, the other extending to all crimes and misdemeanors.

The gentlemen upon the other side, have also combatted with great zeal the principle which I announced in my opening as my view of the law of impeachment under the constitution of this State, that the power to define what is matter of impeachment rests in the Assembly. I endeavored to show then by the authorities, that at the time of the adoption of our constitution, and to this day, matter of impeachment is wholly undefined by any positive law. I think that has hardly been disputed. No power has ever assumed to define it; no statute book ever attempted to limit it; and, as I said then, it has always been undefined, and I believe will always be undefined. If that be so, the constitution—and I ask the attention of the Court to the position—the constitution must vest the power to define matters of impeachment somewhere. The framers of the constitution found matter of impeachment utterly undefined; every case of impeachment weighing with its own proper weight, resting on its own peculiar circumstance, unlimited, uncrippled, undefined, unbound by any positive law whatever, written or unwritten. Finding matter of impeachment so undefined, the constitution gives the power and process of impeachment. It gives the general heads of impeachment, but makes no attempt to define matter of impeachment. It leaves every case where it found it, to its own particular circumstances; but in every case, the power of defining what is or is not matter of impeachment in the circumstances of that case, must be somewhere vested under the constitution, or the whole process of impeachment is a nullity, and a farce on the face of the constitution. It is to be assumed that the framers of the constitution intended to vest that power somewhere. It is to be assumed that the constitution does vest that power somewhere. We are to look into the constitution to find it. Now, where is that power vested? We say that it is included in the power to impeach given to the Assembly. The defence say that it is embraced in the power given to this court to try impeachments. What is the oath of this court? What is this court here to do? What are you all here sworn upon your consciences to do? You are sworn to try the impeachment, sworn to nothing but truly and impartially to try this impeachment *according to evidence*, no more, no less. That is the obligation of your oath; that is your duty here, and that only are you sworn to perform.

Have you marked the distinction between the language of the Constitution of the United States, and the language of the Constitution of this State, and of the Constitutions of many of the States of this Union? The Constitution of the United States, has the Senate sworn as a Court to try the impeachment; but you are sworn truly and impartially to try the impeachment *according to the evidence*. What are you to find? You are to find this and this only,—whether the evidence sustains the charges. What else is your oath? You are sworn

to find upon your oaths whether the evidence sustains the charges presented here by the Assembly against the defendant and to which he has pleaded. What else can you find? Can you shelter your consciences when the evidence proves any one of these charges, by saying that it is not matter of impeachment? If you say of any one of these charges that, though it is proved by the evidence as charged by the Assembly, yet you will not convict, can you shelter yourself from the weight of that judgment by saying that the article was not matter of impeachment?—I apprehend not. I apprehend that the Constitution prescribes to you, and that the people require of you a verdict of guilty or not guilty, in the language of your oath, according to the evidence. In my first examination of this question, I noticed the language of your oath as an apparently deliberate departure from the language of the Constitution of the United States, which, as we all know, is in all its general provisions applicable to State Governments, the model upon which the State Constitutions are framed. The Constitution of the United States vests in the Senate the sole power to try impeachments, and simply provides that when sitting for that purpose they shall be on oath. It may very well be that under that grant of power and under an oath simply to try the impeachment, the power to settle in each case what is matter of impeachment is vested in the Senate of the United States. But our Constitution makes a marked departure from that of the United States. It provides that the court for the trial of impeachments shall be the Senate; that the Assembly shall have the sole power to impeach; and that upon the trial of an impeachment, the Senators shall be sworn truly and impartially to try the impeachment according to the evidence. That oath precludes the power to decide what is or what is not matter of impeachment. The simple oath well and truly to try the impeachment may leave power to say whether the matter charged, be matter of impeachment; but the oath to try it according to evidence, is a mere jury's oath and leaves no such discretion in this court. There is in our State Constitution no grant of power to the Senate to define what is matter of impeachment; this oath is inconsistent with that power; and the departure of the language from the Constitution of the United States is too marked to be accidental; it shows that the framers of this Constitution refused to vest that power in this body. The power to try according to evidence, is the duty of a jury to find the facts. That is your power, your duty here.

If not then in the Senate, as the Court of Impeachments, where does this power reside? It is to be found somewhere under the Constitution. If not here, where is it? It is not in the power to try according to evidence; but it is in the power to impeach. It is implied in the power to impeach; it is part of that power. What is the power to impeach? Is it, as they claim on the other side, the mere function of a grand jury, the mere power to find the indictment, to prefer the Articles of Impeachment? No, sir; it is far more. Why are these Managers now here? Why is the Assembly here by their Committee and their Counsel, if the Assembly are a mere grand jury, if the mere power to charge is the whole power to impeach? A grand jury does not follow its own indictment into Court. A grand jury does not prosecute. The truth is, that there is little analogy between ordinary criminal prosecutions and the great political prosecution of impeachment. The power to impeach includes the power of a grand jury, but includes far more. It includes not only the power to investi-

gate and to charge, but also the power to prosecute throughout. They say on the other side, that our construction is an insult to this Court; that it makes a puppet of this Court; that it makes this Court a puppet and a plaything in the hands of the Assembly. Mr. President, no such thing. Our Constitution leaves to this Court the great, the final power of judgment between guilt and innocence; it leaves to this Court the great discretion vested in it by the Constitution of measuring the punishment to the guilty; it leaves this Court the most solemn and imposing tribunal known to our Constitution and laws; the great political tribunal of the State. In opening this case to the Court, I took the position upon the authorities and upon general principles—and I have not heard it questioned—that the power to impeach is a politico-judicial power; that impeachment is a politico-judicial proceeding throughout, a proceeding of mixed political and judicial functions in all its steps; a judicial proceeding by the political representatives of the sovereignty of the people, to bring political offenders to political justice. This power is distributed between the Assembly and the Senate. It partakes throughout of a mixed character, political and judicial. It is political and judicial in the Assembly; it is political and judicial here. It is political there and here, because it pursues political offence only, and ends in political judgment only. It is judicial there, because it is no arbitrary power, but is exercised only on judicial inquiry. It is judicial here, because you can act only upon the proofs. To the Assembly is given the sole power to impeach, to this Court the sole power of conviction according to evidence. The Assembly is no mere Grand Jury, discharged when they present their impeachment, the whole matter passing out of their hands and beyond their jurisdiction. The sovereign people are prosecutors and judges both; but they have distributed the power between both bodies. The Assembly charge and prosecute; the Senate decide upon the evidence of the Assembly. The power to impeach applies upon the known, undefined, undefinable nature of matter of impeachment; and in the distribution of the functions of this politico-judicial power, it seems apparent to my mind that the power to define what is impeachable matter, is included in the power to impeach; that the power to impeach is the power to investigate the official conduct of every public officer, the power to say upon what facts and for what offences he should be impeached, the power to define and present the impeachment, the power to prosecute it here; leaving to this Court the power of passing on the evidence and applying the punishment. The impeachment begins with the Assembly alone, it ends with the Senate alone. The impeachment begins with the finding of the Articles by the Assembly; it ends with the judgment of this Court. No one step by either body constitutes the impeachment; it is one entire proceeding, distributed between the two houses of the Legislature.—It is no straining of language to find in the right to impeach, the power to define what is impeachable. The grant of that power is wholly consistent and congruous with the discretion of impeachment given to the Assembly; as part of a distributed politico-judicial power, there seems to be a peculiar fitness in holding it a part of the power to impeach. In the distribution of this mixed political and judicial power, it strikes my mind as a good and happy distribution, to give to one branch of the Legislature to decide in each particular case, for what acts an impeachment shall lie, leaving the proof of those acts and the measure of punishment to the other branch. Neither body represents the whole sovereign

politico-judicial power; both bodies do not represent it together; it is cautiously distributed between them, to be exercised in several capacities. And, if not in the Assembly, I see not where this power to define matter of impeachment is to be found under this Constitution. The Assembly are here no mere grand jury awaiting the trial of the charges preferred by them. In this mixed political and judicial proceeding they divide with this Court the sovereignty of the people; and under this Constitution they have the power to say to this Court, as they do say now by my voice: "We ask your judgment upon these articles of impeachment; are they proved or are they not proved? We have found them, and we ask your judgment, not whether they are matter of impeachment, but whether they are true according to the evidence we have submitted to you." And so is the oath of the Senate; and whatever else the Senate find, they find outside of their oath.

It is said also that the power of this body to pronounce judgment upon conviction, carries with it the power of judgment as to what is matter of impeachment. I cannot see the weight of the argument. In the first place this Court is bound to find the defendant guilty or not guilty. If two thirds of the members voting find him guilty, then the Court proceeds to pronounce judgment. The Court upon conviction must remove him from office; in that it has no discretion. But for further punishment, it exercises a sound discretion. If it deems that the the matter charged and found against the defendant merits a *further* political punishment, the Court has the power to pronounce the *further* and graver punishment of disqualification to hold office. I see nothing in that which conflicts with my view, that the judgment of what is impeachable is vested in the Assembly. On the contrary, the great discretion of punishment given to this Court, seems a counterbalance to the power claimed for the Assembly: that while that body alone can determine upon what acts impeachment shall proceed—in this body is vested a discretion of punishment as a check upon the power of the other. View it as you will, it seems a wise and apt distribution.

But, Mr. President, while I deem it my duty to argue the point because I believe in it, I do not think it can ever become a serious question here whether these articles are matter of impeachment. If *they* are not matter of impeachment, in the name of God what is? The defendant calls them libelous, or his counsel does; libelous, if you please, if uttered by an unauthorized body; libelous here, if you please, as the gentleman called them, if fictitious. Does not that very designation of them as libelous make them matter of impeachment? Is there anything which could be said of a Judge, or said of any officer in the State, which if false would be a libel, which if true ought not to remove him from office? That is his own designation of them; but I say that these charges and specifications are a monstrous weight of guilt, if they be true; and that there is no impeachment on earth, no record of impeachment in all our books, which weighs with them. Take all the American impeachments, put them all together in one mass, and you will find the mere abuse or the *mere* usurpation of power. Take the famous English impeachments, Lord Macclesfield's and Lord Bacon's; the charges against them are all for one solitary vice, for yielding to one base temptation; sinning many times, but only a single vice, avarice corrupting great minds. But here you have judicial corruption pandering to every vice, naturalized in the foulest human heart. If these charges be true, you have corruption purchased and paid for by money, by power, by flattery. You have the Judge sitting upon the bench in his own

causes under the shadow of another name,—a mere mockery of administration of justice upon earth. You have him sitting in apparent decency and impartiality upon the bench, dealing out judgments to his own clients who retained him as their hired counsel to plead in their names for the judgment he barters in the name of the law. You have him tampering with female suitors.—You have his judicial relations to women mixed up with his personal passions. You have him dealing out judgments to reward his friends and to punish his enemies. You have him, in the language of his own counsel, guilty of judicial improprieties, judicial indiscretions, to make popularity, to gain friends, to conciliate enemies. I know of no vice that is not here; and although there is a greater weight of pecuniary corruption in the trials of Macclesfield and Bacon, that is but one vice; and as Macaulay says in summing up the case of Lord Bacon—"A corrupt judge may have virtues." But I ask if these Articles of Impeachment be true, what virtue has this defendant? What untainted spot in his judicial conscience, can the eye of pity rest upon a hope? Take all past judicial impeachments, all that are accessible here to you or to me, and put them all together; you will find, it is true, a greater weight of pecuniary corruption in Bacon and Macclesfield; but all, all together, do not show a tithe of the human vices, prompting, governing, controlling the exercise of judicial power. In them, in all of them, you will find corruption the exception. Here, take these charges for true, corruption in favor of every passion, every vice, is not the exception but the rule; a damning accumulation of guilt beyond all other impeachments of judicial officers. I said well, Mr. President, in opening this case, when I said that if the proof sustained these articles and specifications, that here was not a case of crime, but a system of crimes; I reiterate it now. God have mercy on the human heart which cannot feel their weight. God have mercy on the Judge who cannot feel them to be matter of impeachment. And if this defendant cannot feel it, I wish to reiterate what I said before, that if there is no hope here for the second judicial circuit, there is no hope for it *but* in the providence of God. I pray the reporters to record my "but," this time; some of them did so before; but it suited the counsel to comment on a report of my argument which omitted the essential monosylable. My facetious and able friend, Mr. Mills, once complained that justice was defrauded for a poor, miserable, contemptible monosylable. I claim the benefit of mine. And I tell the counsel now, that all his indignation is wasted upon me. I tell the counsel that, failing redress from this Court, I appeal for redress, as thousands will appeal, to Providence. Neither he nor I can penetrate the ways or the wisdom of God; but I have to learn that any appeal to Providence for the redress of any human evil, can be an impiety to God or inhumanity to man.

Mr. President, I have now gone through with all that I propose to say preliminary to the examination of testimony upon the chief and most material Articles here. I have said all I propose to say upon these last Articles ten and eleven. I have said all that I have to say upon the general questions raised here by the defence. I have spent more time, far more, and far, far less to my own satisfaction, and I doubt not to the satisfaction of this Court, than I hoped to do and than I think I should have done, if I had felt physically abler to make the effort. And if, before I proceed upon the particular examination of its evidence, the Court would rise till to-morrow morning, it would be a favor to me, for which I should be very thankful.

The Court then adjourned till the next day.

SATURDAY, July 9.

MORNING SESSION.

This morning the clerk of the Court, after having read the Journal of yesterday, remarked that the Journal as printed, read, that "Mr. Ryan commenced the argument for the persecution," instead of "prosecution." (Laughter.) The clerk said that he mentioned the mistake in order to say, that it was the mistake of the printer, and not of the clerk, who had furnished it to the printer correctly written.

Mr. RYAN then resumed his argument.

Mr. President, up to the adjournment last evening, I had occupied the Court, in the consideration of the general aspects of this case, and in ridding it from the difficulties which the defence had labored to intrude between guilt and judgment. And I am met this morning by a stale and witless jest, I know not and care not whose, which seems to please some persons here. I am very willing to abide all such assaults. There may be in some minds here a willing confusion between prosecution and persecution. There is a class distinguished by the poet, which always regards prosecution as persecution. No doubt; but, Mr. President, what is prosecution and what is persecution? However some here may be disposed to confound the two, I suppose that all human sense and human morality mark the difference and mark it broadly. I can tell the counsel who sits here, I can tell all who abet or enjoy the indecent joke intruded here, that if they do not know what persecution is, we of the second judicial circuit, certainly we of Milwaukee, know what it is, and have long known it. We know from whence and why and with what power it comes. We know whom it visits. We know its effects. We have seen them in men's business and in men's homes. We have seen them in every relation that men bear to human life, and in every duty which men owe to the world. We know the spirit which is impotent to prosecute, but potent to persecute. We know the vengeance which dare not confront a man standing on his defence, but stabs him in the dark. We know persecution, what it is and where it is. But I had supposed, Mr. President, that solemn charges, judicially preferred, sustained by evidence, before a competent tribunal, were of too grave a weight to be attacked by the cry of persecution. I had supposed, sir, that when the Assembly of this State, in the execution of its high constitutional duty, had brought here this array of terrible accusation and substantiated it as such charges were never before substantiated, in all the solidity of living proof, that neither the Assembly nor this Court nor the spirit of public justice, would be here insulted, whether in dull jest or stupid blunder, by the sinner's cant of persecution. Sir, if ever such prosecution was just, this is holy. It is prosecution based upon the eternal principles of right, prosecution challenged by the pollution of the seat of justice, invoked by the majesty of justice upon the traitor who prostituted it in its own temples; prosecution for the violated rights, the broken trust, the blasted hopes, the desecrated homes, the dishonored fame, of the second judicial circuit. They have invoked prosecution of the Assembly; and the Assembly is here in the spirit and dignity of constitutional prosecution. If persecution be here, it is persecution prosecuted at your bar.

As I was saying, Mr. President, I felt obliged in the beginning to free this cause from the technicalities interposed here by the arguments for the defence

between crime and its punishment; and I felt obliged to do so at such length as to consume all of the afternoon session yesterday; for after all, those questions are really the burthen of the defence here. I feel, Mr. President, that, at my best, I am illy able to perform such a duty; and in the state of bodily prostration I was in, I am conscious of having been very far unequal to the due discussion of the questions I had to meet. I presume that I did not discharge that duty to the satisfaction of this Court or of these Managers for whom I speak; I certainly did not to my own. But I shall not go over any of that ground again. To the sound judgment of this Court, to the intelligent conscience of every member of this Court, I commit those questions and leave it to supply whatever was wanting in the force of my words, or the pertinency of my arguments last evening. We now leave that branch of the case and approach the proof. I approach it wanting confidence, truly and unaffectedly wanting confidence, in my own mental ability, in my own bodily vigor, to bring it out in its living attributes of strength before this Court. But I approach it with a solemn, abiding confidence and faith in its vitality; and I am not without the hope that, like the fabled giant of old, who recovered strength when he touched his mother earth, my tongue will be inspired with some vigor, my arm nerved to some power, when I touch the living body of this proof, on which I cannot only dwell as an advocate, but feel as a man, feel with all the power of one who has witnessed and felt the wrongs I discuss. I can feel, not with any narrow feeling for self, I can feel for the whole second judicial circuit, except the little system of venal satellites, who have revolved round our judiciary, who have sunned themselves in its light, who have lived in its smiles, who have fed upon its favor, who have waxed fat and strong upon its corruption.

Mr. President, last evening in presenting the general aspects and character of this impeachment, I said all that I think it necessary to say, all that I propose to say, upon Articles 9, 10 and 11; and having thus for convenience reversed the order of these Articles, I will perhaps avoid confusion by following them throughout in the same reversed order, and so come now to Article 8.

My amiable friend is astonished, is shocked; his moral sensibilities are outraged, because we claim a conviction on this eighth Article. And his learned and able associate, who promised a grave discussion of the whole case to the Court, who began his argument by a vow that he would not be enticed from the solid level of his sobriety, to indulge in any flights of eloquence, which we all know he can achieve at will, when he came to Article 8, he could not be grave: his sobriety forsook him: his argument was a jest and a broad one. It was a mock and a scoff to him, and an indignation to his sensitive colleague, that we should insist upon conviction on Article 8. Is that charge a solemn one in itself? Is it a charge worthy the attention of this Court in itself, that the Judge who sits upon the Bench and is invested with the power of judgment, with that power which of all others can be most abused, which of all others can reach human interest and master human weakness and command human passion; that the Judge vested with that power sitting in judgment on the rights and interests of women, should with all the odor of his place and all the prestige of the law about him, approach the female suitors of his Courts, and seek to gratify upon them man's most brutal passion? Is that a charge for ridicule? Is that a charge for indignation from the other side, even if it is but half proved by the reluctant testimony of its victims? I remarked, Sir, in the opening of

this case that some ladies, after having been served with our subpœnas, had left this State with singular and suspicious unanimity: and it so appears in the proof. It appears that three ladies have left this State in defiance of the summons of this Court, after that summons had been served upon them. They say they wish that these ladies had staid. God knows we echo that wish. And they say here triumphantly, as if we had the power to stay the hand of death or disease or calamity upon our witnesses, as if we could have reached our arms out and grasped the drapery of these flying women and detained them here to testify against their will,—that it was an outrage to prefer these charges, because these women have fled and saved themselves from exposure upon the stand by testifying to the defendant's delicate attentions to them Sir, one of the last decisions which I received before I left home, made, I think, within the last year by the English Court of Chancery, was one somewhat pertinent to the defendant's views on this Article, and I shall relate its main feautures. A beneficed clergymen of the Church of England, was arrested, prosecuted and indicted for a crime against nature. He was acquitted. He left the country and was gone for some years, leaving his children in the care of his wife. When he returned, she refused all communication with him and refused him all access to his children. He applied to the Court of Chancery for a habeas corpus, that he might either be restored to his paternal guardianship over his children, or at least have access to them. The wife and mother resisted his application, and for cause showed the indictment which charged that horrible crime upon him. He answered the indictment by producing the record of his acquittal. She replied by showing that he was acquitted in the absence of all evidence against him, the prosecuting witnesses having vanished before the trial. Upon this case the Court says, that even under circumstances of collusion—and, by the way, none were shown there—but that even in a case of collusion between the defendant and the witnesses, so that the evidence upon which the accusation is founded, is not brought forward at the trial, the judgment of acquittal is a legal presumption of innocence; but that it is not a moral presumption of innocence: that it is conclusive evidence in a Court of Law, but not even presumptive evidence in a Court of Morals; and the Court holds that when it appears that the arrest took place upon evidence and that the indictment was found upon evidence, although the Court does not know what that evidence was and cannot judge of its weight or truth, and that the acquittal took place because that evidence was lost or absent; *then* the acquittal carries with it no moral presumption of innocence. And the Court indignantly turned away that clergyman, and says that it will not prostitute its power either by giving the custody of the children or giving access to the children, to a father who had *so* escaped from *such* an accusation.

The flight of witnesses, Sir, is no presumption of innocence, and common decency might have restrained all this mockery of indignation. But we have *some* proof; indeed I feel that we have enough of proof. We have the cases of Mrs. Howe and Mrs. Pope. We have some evidence of their interviews. Our proof, as we believe and claim, has not penetrated the secret history of those interviews; but we have some proof of their character. And the grave and learned gentleman who abjured all rhetorical discussion of this cause, when he came to these cases, stopped to amuse the Court with broad and loose levity, and sneeringly inquired what constitutes an indecent interview. He scoffs at

the idea of indecency in the interview between Mrs. Howe and the chaste Judge of the second judicial circuit; and asks of us what an indecent interview is. Aye, he challenges the judgment of this Court to settle what makes an interview indecent. I will not insult the sense of decency of this Court by praying its judgment of indecency. I do say that this ridicule calls loudly for judgment of guilty upon these Specifications. A private interview; a private and secret interview; no eye but God's looking on; in a bed-chamber in a public house, avoiding the parlor made decent by the presence of the landlady and her children; between a Judge, sitting in judgment on the fortune of the husband, and the suitor's wife, a poor, weak woman, who was there to propitiate his judgment, who could not trust the office to the knowledge or reason of her husband, but who trusted to her own sex to accomplish what she sought; sitting upon the side of a bed in that privacy;—that is not a private and indecent interview! I do not know, Sir, but that when Joseph was a Judge in Israel, such an interview might pass for decent; I hardly think a sensitive husband would have thought so. But it seems that, immaculate and celebrated as Joseph's virtue was, it was put to its test by an adventurous woman; and I doubt, Sir, and doubt mortally, if the test had been put upon this Judge, whether Mrs. Potiphar would have been obliged to content herself with the trophies of his apparel, the torn skirt of his garment. But that lady lived in other days and under a different judiciary. Mrs. Howe is the lady of our interview. There they were, Sir, in the old language of the law, *solus cum sola*. If a husband and wife had been separated for years, and just that proof of interview between them could be given, and a child followed in the natural course of time, that proof would be proof of access and that interview would legitimate the child. Far less suggestive proof than that would do it. And that interview is not private and indecent! When Mr. Finch had discovered these parties in that attitude, he retired, gracefully as the gentleman says, from the room. Mr. Finch did not like to intrude, and we all know that any third person is an intruder in such cases. Mr. Finch, then, gracefully withdrew, and when he brings his evidence here and proves these facts; when he proves that interview with this lady sitting upon the side of the bed, in that bed-room, avoiding the public parlor, avoiding every room but a bed-room, avoiding the Judge's own bed-room, in which the members of the bar might seek less sanctified judicial intercourse, and taking another forbidden to be entered by any but the happy and privileged Judge;—when Mr. Finch has proved these facts, and proved, as we supposed pretty conclusively, the private and indecent interview; lo! the lady of this tale, Mrs. Howe herself, is called upon the stand by the defence. There are ladies in the world, I suppose, weak enough to feel troubled on the stand under such circumstances. She comes upon the stand, calm, cool and self-possessed, and gives her testimony as a commonplace relation. Strong in herself, Mrs. Howe faces Mr. Finch's evidence without surprise or irritation or confusion. She coolly denies all impropriety. She swears in effect that the Judge's conduct was exceeding chaste, exceeding pure. She rather thinks she sat upon a chair; it is possible she may err upon that little immateriality and that she may have sat upon the bed. Finch swears that he saw her there. She did not, pretend to refute or explain the twin indentations in the bed, sworn to by Finch. She admitted the interview, but she swore it was all chaste, all pure, all virtuous. But she says that, after the sweet converse which

took place in that room had been interrupted by the irrelevant intrusion of Finch, and that gentleman had retreated "with his finger in his mouth *insinuatingly*,"—I should have thought, sheepishly, but her suggestive memory says insinuatingly,—she tells us in substance that, as they were enjoying this chaste intercourse, the Judge playfully threw his arm around her and clasped her little body, and pleasantly remarked "what a little woman you are, Mrs. Howe." Upon this endearing advance, she testified that she told him she had come there upon business and expected him to treat her as a gentleman. She would neither deny nor affirm the phrase which has become proverbial in Waukesha, "Business first, Judge, and pleasure after." I asked the lady—not quite, I think, as recited by my learned friend—some question; the gentleman himself I believe it was, who asked the first question, in answer to which she swore that Judge Hubbell made no immodest proposition to her there; then it was I asked her—"Mrs. Howe, didn't you consider that private imposition of hands in that bed-room, an immodest proposition?" "Oh No," She answered me. She thinks it all exceeding right, exceeding pure and chaste. "But, Mrs. Howe," I pressed her, "if the Judge was so very proper and so very chaste, why make the suggestion that you expected him to behave like a gentleman towards you?" "As a guard," was the apt reply. "But as a guard against what, Mrs. Howe; if his conduct was so pure and so good, you needed no guard against it?" I still ask. Her reply is ready—"Against anything which might happen, which he might afterwards do." "But what put you on your guard, Mrs. Howe, against what he might do?"—The gentleman says she gave me a good answer. I think she did. I think she gave me a most significant answer, pregnant with the philosophy of that interview. I think it the answer of a woman who knows well the nature and evidence of passion in man, who knows well how to play upon man's passions and to accomplish her ends by playing upon them. I think it the answer of a woman well skilled to excite and to balk passion until she has subdued man to the purpose she has played upon his sex to accomplish. I think she gave me the answer of a woman who does pursue "business first and pleasure after." It is an answer full of sex, shrewd and disciplined.—"Human nature." Mrs. Howe's knowledge of human nature led her there, and put her on her guard when there. A less demonstrative approach would have been sufficiently suggestive to her. Human nature! It says all. It is evident, Mr. President, that the lady's study of human nature had not been in the story of Joseph in the Bible. Human nature, in her use of it, is a very comprehensive and suggestive term.

So of Mrs. Pope. She, through her friend, Dr. Greves, makes a judicial appointment with the Judge of the Second Judicial Circuit. She is an applicant in one of his Courts for a divorce. She wants to have it settled, not through her counsel in court by judgment from the Bench, but in a private judicial interview with the Judge, what her rights are; what her course should be; and she, properly enough, perhaps, makes an appointment to go there with Dr. Greves. I mean properly, as concerns herself. It seems that she went without the Doctor, about the time that he appointed to go. The Doctor says he went to accompany her, but found her gone, on account, I suppose, of some difference in time. In her anxiety for judicial light, it seems that she supposed herself safe in going alone. So much we know. What further we know we know only from the defendant's own accounts. He is accused of indecency in that

interview. And here I wish to qualify something which I said yesterday. I believe I gave the impression that the Haney case was the only one of these charges circulated against the Judge at the last election. I wish to say that this story also was alleged against him at that time, but not in print. It was whispered, but not published. Mrs. Pope goes to his room alone. An accusation goes out against him of improper conduct towards that female; and he tells his own story to Mr. Randall, in answer to Mr. Randall's frank statement of the imputations against him. He tells Mr. Randall that in his interview with Mrs. Pope he behaved like a priest? What is the behavior which he said would become a priest? Why he put his arm around her too? The judicial arm embraced her also; and she, it seems, not appreciating the judicial caress, escaped from it. I do not pretend to know, Mr. President, what the private communion of priests with females may be; but if, according to the defendant's theory, they are in the habit of imposing hands upon the persons of the tender sex, I advise the ladies of their congregations to avoid private sacerdotal interviews. Between persons of opposite sex, standing in no conjugal relation, private manipulation is hardly orthodox. Mr. President, it is said that he who lays his hand upon a woman, save in the way of kindness is a brute. I say more; he who puts his hand upon a woman, even in kindness, save in that kindness which is authorized by the relations between them; he who lays his hand in the unauthorized instinct of sex upon a woman, insults and wrongs her. I speak not here of bestial assaults upon the sanctity of woman's person. I care not whether man's arm be thrown gently around the waist, or man's hand clasp the hand of woman; I care not what the imposition of hands may be, if it be the imposition of sex unauthorized by the relations of the parties, or the free consent of the woman first given, it is a brutal assault. It is the assault of lust upon the outworks of chastity. It is an attempt to debauch. Mr. President, God has made man strong and woman weak. Mr. President, the same God has yet made human society dependent on the chastity of woman, and on man's faith in it. Take chastity from woman, and family, kindred and home become things unknown amongst men, as unknown amongst the brutes of the wilderness. What protects society? What upholds the purity of woman, which is the life and being of woman upon this earth? Ruled by the laws of mere physical force, they walk upon the earth subjects of man's passion, as a man walking the wilderness of Africa is the subject of the untamed appetite of the wild beasts who roam there in the supremacy of brute force. But God has given to woman a chastity of being that men worship like an idol. God making woman weak in body, has made her strong in purity; and she walks this earth, with all the master strength and undisciplined passion of men about her, and yet walks and will walk this earth for all time, free and secure in her native modesty, unapproached, save in honor, unsullied even in thought. That is God's charter to woman—that is her guard on earth. And the man, I care not who or what, unlicensed by any relation of legitimate affection, claiming no father's, no brother's, no son's, no husband's, no recognized and accepted lover's right; the man who in the effrontery of passion, or the disguised approaches of passion, but raises his hand towards her, aye, but looks his lust to her, is a brute who outrages not merely her, but outrages all the sanctities of human nature in her person. Sir, even the worst men and the worst women are not mere brutes. They do not, as I think Shakspeare has it, "look and

leap." The most degraded human passion reverences in its object something of the sanctities of human nature; the most degraded human passion feels its way and has its gradual approaches to consummation. The madness of passion may indeed sometimes violate all laws, human and divine; but practised debauchery is a coward, and gropes its way with lustful word, and eye and hand. I ask of the common sense of this Court, if Mrs. Howe, when that judicial arm was so fondly thrown around her little body, did not repel him, whether that scene, that private communion ended there? Was there no interpretation in the sensual eye, was there, indeed, as she tells us, no suggestion in the unlicensed embrace? Who believes that if Mrs. Pope had not raised up those supplicating woman's hands, which he ridiculed in his electioneering tale; if she had not in her agitation, instinctively raised up those palpitating arms upon which he threw, in his account to Mr. Randall, a brutal mockery, which was in spirit a mockery of all female purity; if she had not in her frightened confusion asserted the modesty of woman, imploring him to believe that he had mistaken her, "she was no such woman;"—who believes that the judicial arm would have been contented with that external embrace of her waist, that her judicial host would have been satisfied with that barren tax upon her wasted person and those broken features pleading for a divorce from a brutal husband? Who believes that *his* virtue would have redeemed that scene from consummated pollution? Who believes that rampant vice, unopposed, halts in its career or surrenders opportunity, to virtue? Away with such effrontery of pretence! It is an insult to our intelligence, to palliate the character of those interviews. I assume them to be, what the common intelligence of mankind will assume them to be. Those interviews, thus private, thus indecent, were attempts of debauchery, not balked, if in one case balked at all, by any residuary virtue of this defendant. And were they not in the language of this charge, attempts to use his judicial station and influence for the purpose of debauchery? Both of those poor women seek him as a judge. Mrs. Howe, by her own story which I shall comment upon by and by, but which I may take as true for the present specification:—Mrs. Howe says, she sought him for the purpose of getting a judgment against her husband vacated. I know nothing about the facts and circumstances of that suit; and I care nothing about them. It may be, though I know not, that her husband was poor. It may be, though I know not, that he was honorable and happy in an humble home. It may be, that the judgment given, as she alleges by mistake, was hanging like a black cloud, over that home, robbing it of its sunshine and likely to burst over it, driving forth from it husband and wife, children and household gods. And she, be she good or bad, sought him with that strong feeling which binds woman to her home; aye, binds the worst women to their homes. The worst wife that walks this earth has a sentiment of home; and even when she betrays the honor of her home, she continues to feel its influence and to cling to its remaining sanctities; her only safe refuge on earth, where her children were born in love and nurtured in innocence, where dwells her husband, whose roof only, however she may have dishonored him, can shelter her in honor upon earth; the home of all her affections, however sullied by her passions. Even when she deserts it for hate, or forfeits it for passion, the holy sentiment of home is inherent in her woman's nature, and through all infidelities and vices, retains a place in her woman's heart till she dies. And this poor woman, good or bad, this Mrs. Howe, cherished

that sentiment. This judgment—to say nothing here of the indictment—threatened to break in storm over her home. She does not ask her husband to go to the judge. He had opposed the Judge's election; and she knew the Judge. She knew that the male sex who voted on the wrong side, had little hope there for mercy, or for merciful judgment. But she knew that the judicial heart was open to the pleadings of female nature, and the influence of female charms, even when cast in a very small mould. She sought him there to implore away that cloud hanging over her home. She says he admitted the justice of her claim. She says he told her, if she got the proof, he would do what she wanted. And to that poor woman, thus brought to his feet to plead for the home of her husband, and the bread of her children; with her hopes thus hanging on his words, this Judge upon the bench feels and manifests his sex. In that supplicating attitude, the judicial arm embraces her. And is not that using his judicial station for the purpose of debauchery? Did he not assent to that private interview, in that private bed-room, avoiding the parlor where Mrs. Jones and her children were, and where the interview could not have been indecent? Did he not know that that woman sought the interview with him for judicial favor? Did he not know the power of his position over her, did he not hear her complaints and prayers to him as a Judge, and did he not abuse his judicial power and station, and influence over her, when his prurient arm clasped her person, as the first approach of lust to its end? She is his witness, sworn here for his justification and her own fame. What is her excuse for the indecent privacy of that meeting? She says that the parlor was occupied by Mrs. Jones and her children. She tells us in her pert way, that Mrs. Jones made a nursery of it. I tell this defendant and his lady witness, in the name of common decency, that when they have judicial business together, and have none but judicial business, their meeting had better take place in a nursery with the children and the childrens' mother, had better be in the kitchen with the cook and scullion, had better be in the decent security of the public highway, had better be in the common jail, with witnesses to protect them both, than be held by connivance in a bed-room, *solus cum sola*. And what was there so forbidding in the parlor to mar the communion of the judge and the lady, if this interview was so honest and so pure? The presence of Mrs. Jones and her young children would be no restraint to Mrs. Howe and the Judge from saying anything that might be openly, properly, honestly, or decently said between them on the subject of her business; their presence would be a restraint on tenderer communion. If this woman was right in making her appeal to him to set aside that judgment, what harm could come of it if Mrs. Jones and her children should know it? Was Mrs. Howe's objection to those spectators that in an open interview in their presence in the public room, she could only bring her reason and not her sex to bear, in accomplishing her purpose? There is no other rational explanation. And on his side, when he heard that Mrs. Howe wanted to see him, and was in an adjoining bed-room waiting for him; why, if he would see her at all, did not this chaste Judge, this second Joseph, go down to the parlor, and say, "let her come to me here; I will have no private chambering; I will hear her as a Judge, but I will not be tempted by her as a man?" Was he betrayed by innocence or by lust? The motive is palpable in the conduct of both. He expected his usual judicial entertainment with the lady; and she expected to accomplish her end by playing on his passions

and holding them in suspense, subservient to her wishes. And it does not alter his position if she cheated him of the hope she excited, upon her terse and comprehensive axiom, of "business first and pleasure after."

How was it with Mrs. Pope, a poor lonely woman in the most melancholy position in which a woman can be placed. We may mock it with the cant sneer of "grass widow;" but sneers prove nothing, and the woman who stands alone upon earth, neither wife, maid, nor widow, is in a condition to invoke all our pity, jest about it as we will: Mrs. Pope was seeking a divorce from a brutal husband; and with the natural anxiety of a woman under such circumstances, she readily and innocently listens to her counsel, who advises her, as it appears here in proof, that it would be proper and useful for her to see the Judge on the subject. Being a stranger to him, she applies to Dr. Greves to accompany her. He promises to go with her, but tells her that there would be no harm in her going alone.

Judge HUBBELL. There is no proof of that.

Mr. RYAN. That is the testimony of Dr. Greves. And finally she does go alone. I know not who that woman was, I know not where she came from, I know not and I care not, if she was ever in a Court of Justice, or ever saw the sacred judicial person before. But that woman evidently went to that interview in the faith which men and women have, till such trials as those disabuse them, that if honor does not sit upon the bench, what does sit there *will* ape integrity with a decent hypocrisy. She went there this poor woman in that position, seeking for a divorce, seeking to be freed from the brutality of a husband, seeking an escape from the marriage which had been to her an oppression, not a protection, standing alone on the face of the earth, but seeking in her loneliness to stand untrammeled by the power of a brute; she goes there to him who wears the robes of Justice, she tells her sorrows and appeals to him to be freed from the wrong and insult of one piece of manly brutality, and he answers her woman's trials and tears, by throwing his lusty arm in passion around her person. I care not to say it, it was a brutal act, a cowardly act. And when she was told to continue the story which her agitation broke short, when she raised to him those supplicating hands, trembling in fear and insulted modesty and protested to him that she was no such woman as his purposes inferred; if there had been in that heart one manly throb towards the sex that bore him, if there had been in that heart one sense of delicacy towards the sex to which we all owe our being, without which our lives would be a waste, without which it has been beautifully said the beginning of life is without succor, the middle without pleasure, the end without consolation; if there had been one reverence for humanity, one spark of noble manhood in that heart, those pleading hands had never been mocked by him.—But there are rare men, thank God rare, in whose breasts passion is pure brute lust, little different from that which 'looks and leaps.' There was a man invested under the Constitution of this State with the judicial power, that fearful power which I described in my opening in this case, delegated to him as the holy trust of public justice. There was the home of one woman threatened by an execution. There was the other woman pleading for a divorce from a brutal husband. Both were perfectly in his power. Their welfare, the sanctity of their homes, the prospects of their lives, were a living thought in that man's breast, to give or to refuse. And he lays unholy hands upon them. I ask this Court, and I ask it solemnly here;—we are all

apt by a loose habit, the best of us to treat slightly such offences of our sex to the other; but through our worst levity, there is in our hearts a redeeming principle of humanity, of philanthropy, which does not mock such wrong; and if there be here in this Court, in every heart in this Court, as I know there is, reverence for the mothers who bore us, reverence for the wives who have lain by us, reverence for the daughters who have been born to us; reverence, if we have neither wives nor daughters, for that real or ideal pattern of female excellence which no man ever lived to maturity without cherishing in his heart and carrying there a glorious idol of affection; if there be in every heart here that respect for female virtue, for female honor, for female purity of character; I ask the judgment of this Court upon this Judge, who has prostituted his high judicial power to strumpetize the suitors of his Courts. I say this; that if roving lust, if rampant, indiscriminate, vagabond lust, bound by no ties, limited within no bounds, quelled by no consideration, is to sit upon the bench, let us, if we cannot teach it virtue, at least teach it that decent propriety which mimics virtue with a modest hypocrisy. Let us teach such lust that, rove as it will, at least the judicial character must not rove with it. Let us teach a lesson to such men that, approach women as they will, they must not approach them at least in their judicial character; that if they seek to seduce and degrade all of the female sex they meet, they must do it at least in their unofficial brutality, and must not pollute their judicial robes. Let us in the name of human decency, teach the world that no man sitting on the judicial bench amongst us, will be tolerated to exercise his judicial power over poor, weak, supplicant women, to humble their bodies before him to appease his insatiate lust. It is cowardly, it is inhuman; aye, for all who believe that there is a God in heaven to punish the strong or redress the weak, it is damnable. In the name of the Assembly, I ask the judgment of this Court upon it.

Passing on to Article 7, I take up Specification 4; the case of Barker against Pratt. I may as well take this occasion to remark, that what I say upon the principal Specification framed upon any of these charges, I say once for all upon all the Specifications founded on the same facts. There has been much discussion upon this specification, as to whether the judge ought to have stayed the execution or not. I am not going to follow this discussion, or much of a similar character, upon the details of the evidence. I deem them irrelevant, and intended to distract us from the main considerations. I have a brief answer to make to all that has been said about the stay of this execution. In the first place, the Judge ought either to have given no judgment, or ought to have given that judgment effect. There was no new evidence before him when he stayed the execution. If there was such a mistake or fraud upon the record from Vermont, that he ought to have refused execution, then he ought to have refused judgment; but if there was no such fraud or mistake, as warranted him to refuse a judgment, he should have permitted the execution to take its course. It is the settled law and practice of this country, familiar to the legal members of this body, that the judgments of every State in this Union, are entitled to the same weight in every other State, as they have in the State whose Courts render them; and unless there was something on the face of that Vermont record to show that the Courts of Vermont would not enforce the judgment, the Courts of Wisconsin were bound to act upon it. But I pass that. The judgment was rendered. Upon no motion noticed according to the rules of the

Court, upon no sworn evidence presented to the Court; but as their own witness tells you, upon a verbal suggestion made in Court, when the plaintiff's counsel had gone, the execution was arrested. To be sure, Mr. Downer says, that he expected it; he had reason from the known disposition of the judge, and from his avowals in that case, to expect it. But that is not the gist of this case. The Judge stayed the execution contrary to the practice of the Court, and against the decent usage of all Courts, upon the mere unsupported suggestion of the party, to serve the personal interest of the party, not judicially before the Court. He granted a judicial indulgence, without a judicial proceeding to obtain it. And I do not care whether or not he was right afterwards, when acting upon judicial evidence, he refused to vacate the order staying the execution. I do not care whether the affidavit presented at a subsequent term, was true or false, was sufficient or insufficient to warrant a stay of execution. I do not care whether granting the judgment and staying execution of it, was or was not better for the party, than refusing judgment. That is not the gist of this Specification. They seek for a guilty motive, and here their judge emphatically gives one to us. Whether it was in itself and upon proper evidence, proper to stay the execution or not, he stayed it without any evidence and avows to Downer, that he stayed it upon a corrupt motive. He admits to Downer, a careful witness, whose careful statements no attempt has been made to impeach, that there was no legal cause for staying that execution, but he tells him the real cause. He tells him, that Pratt has other money to raise which is pressing him severely. He says, that Pratt is hard up; and that he stayed this execution, not because there was a doubt about the Vermont record, nor of the right to have execution upon the judgment here, but because Pratt was hard up. Because it was not convenient to meet the execution, he stayed it for his friend Pratt! That is the testimony; that is the fact. Pratt, I suppose, was his personal and judicial friend, and the Judge upon the seat of judgment, must serve his friends. He must keep his friends rewarded. The law, in his pliant keeping, must give way to the necessities of his friends. It was inconvenient to Pratt to pay, and the process of the Courts must yield to his necessities. That is the gist of this evidence. That is the guilt of this Specification.

Come we now to the celebrated case of Wyman against Wyman. It is true, as the counsel has exultingly said, that here the memory of our witness has seemed somewhat to fail him. It is very true that he told us in effect upon this stand, that he had been terrified out of his memory, and he told us by whom. The gentleman says—I perhaps may forgot his precise language—that Mr. Ingham was a weak man with a weak memory. I admit the weak man, but I doubt the weak memory. He tells us that his memory was assailed, and how: he tells us that his memory was shaken. It was not his memory that was shaken, but his courage. And they talk here of the power of this prosecution, and of the weakness of the defence. Away with such barefaced pretence! The power is on the other side; a fearful power and fearfully proved. There it not a Senator in this Court who does not know it, who has not seen it. Here stood upon the stand, a living example of its blighting force. If Ingham failed us in all else, at least he gave us a living exhibition of the power and character of this defence. Of his own motion, he had disclosed to the Assembly, upon his oath, the facts upon which this Specification was framed; and when called here to prove them, he came—poor, foolish, weak young man—

upon the stand, afraid to utter the truth out of his memory; so assailed on every side, so terrified out of his manhood, that rather than speak out the plain memory of his conscience, rather than encounter again the terror which bestrides his memory like a night-mare, he casts a voluntary blight upon the character of his whole life. He felt the shame. He felt it sorely here upon the stand, and asserted in palliation a constitutional treachery of memory; but he displayed in living proof the true cause—a moral cowardice, worked upon here to suppress the truth. Mr. President, Shakespeare gives great power to the scene, when Richard bares in the council chamber, the arm blighted by the arts of the Widow Shore. Mr. President, I want only the power to parade here, with far more emphatic exhibition, in the cowed conscience and blasted memory of this poor, frighted witness, the terrible reality of the blighting force, the witchcraft of perverted judicial power. You all saw it. You all saw in it something of the nature of that power which has been a living tyranny in our Circuit. You saw and heard this poor young man upon the stand; vacillating here between his fear of the God whom his oath had invoked, and his fear of the criminal his oath should accuse. He came here upon this stand, a full grown man, playing a man's part amongst men in the world; and he was here a coward, afraid to trust his own memory for the facts of his evidence. He admitted that he had sworn to these facts before the Committee last winter. He admitted that then, before he was tampered with, he swore to them all as the undoubted facts, witnessed and remembered. And so when he was here—when he consulted his own memory alone, it was just as it always was; but when he recalled what had been said to him, and by whom, not to remember, *then* he could remember nothing. It is not I who interpret his testimony thus, it is himself. He stood here in living manhood, and confessed it before this Court, his country and his God. He admitted that when he could put a blind before him, and shut out the basilisk eyes which charmed him and made a coward of his conscience, he could remember all still as he had sworn to it before; but when he came under that influence, he could remember almost nothing. He was shaken in body and soul, and was sure of nothing he had seen or heard, said or done; he could think of nothing but what had been said *in terrorem* to him. The facts dance before his blasted sight, like the confused and undefined phantoms of a dream; and Mr. Ingham dare not be sure of anything. No; not for his oath, not for his soul, before God, could that poor, weak, blighted witness remember the truth he had witnessed. He dare not trust his own sworn memory. His memory was appalled by fear. His conscience was silenced by fear.

This was our witness. Well, terror had spared him something. He is able, at least, to remember something of the truth in his own vacillating way. He would prefer to forget every thing; but there were some things too palpably remembered, to be forgotten. He remembers that night. The gentleman urges that it was not late. He seem to shrink from the night. I do not know, Sir, that deeds are damned or sanctified by the hour at which they are committed. The flowers, indeed, generally close with the day; and the virtues are seldom night-walkers. But there are men and women blessed with tastes which love the moon. There are propensities more conveniently, graciously and gracefully indulged in the shadow of the night than under the light of the day. But it is not day which makes virtue, nor night which makes vice. Vice only courts the obscurity of night for concealment; and, in this case, whether it was late

or early, we have it at least conveniently dark. Mr. Ingham cannot remember the hour; but he can remember after dark a man coming to Seymour's in secret and disguised and so conducted up stairs.—His curiosity was naturally aroused to ascertain who it was. Curious to know, he stayed there for some time,—as the gentleman said to him and he said to this Court,—until sleep overcame curiosity. He cannot tell how long he remained there. His own impression is that he staid till 11 o'clock, but he is frightened out of all distinct recollection, and cannot tell us whether he remained five minutes or five hours. The Court must judge how long it took in those circumstances of tantalized curiosity, for sleep to subdue watchfulness in Mr. Ingham's peculiar organization. Well, he went home to bed, with unsatiated curiosity; that he can remember. But he cannot remember that he was solicited by Seymour to go; no, not a word can his shaken memory recall. Seymour swears that this was the interview at which Atwood and his wife were present. Seymour says that he conducted the Judge up stairs; that he left the street door open below for Atwood and his wife to come in; that they did come in; that he left the room for a moment, met them within some six or eight feet of the head of the stairs and that then he re-entered the room with them. But let us examine Mr. Seymour's story further. Mr. Seymour's wife and Mr. Seymour's guest, Mr. Ingham, were sitting in the parlor with Mr. Seymour, when he heard the knock or the ring at the door. He knew who it was. He knew, unseen, unheard, who the judicial visitor was, and he knew for what he came. So he shut the door as he left the room. Why did he shut the door? To keep the curious Ingham and Mrs. Seymour whose curiosity does not appear, from knowing who it was that came and whom he came to visit. I do not know whether my friend, the 'old politicianer!' loves, honors and obeys his wife. I believe it good for him if he does; but it was conjugally unfair, it was rebellion, Sir, against the majesty of woman, for Mr. Seymour to smuggle a visitor into his house, without the knowledge of his liege lady, unless indeed he had some very ample motive for it. Now if Seymour was secretly introducing a lady into his house at night, I could conceive the delicacy of his situation at once; but when he comes to introduce thus stealthily a gentleman who could not trouble the jealousy of a wife; who upon any legitimate errand would scarcely excite her curiosity; I apprehend there must have been some special and pressing reason for concealing that visit from his wife and guest. Wives perhaps do well to watch the women who come to visit their husbands. I suppose that it suggests to them their own marital rights.—But when male friends call on their husbands, I apprehend their principal anxiety is for the contents of their bottles; at least there is no fear of violated marriage vows. Why then conceal that visit from Mrs. Seymour? How as soon as the knock came at the door, thus suggestively and stealthily conscious who the visitor was? By what talismans could he know that it was the judicial knock? By what prompting did he shut that door to screen his visitor from the curious eyes of his guest and the womanly eyes of his wife? Why marshal him up stairs in that guilty and clandestine way, unless Mr. Seymour knew and knew well, that it was to a private and indecent interview? There is no other explanation of it. What to his guest, what to his wife, was the interview between the Judge and this woman about her divorce, if it was innocent? Take his story, and it was not to be private. Atwood and his wife were to participate in the interview. By

his story there was no secret to keep, there was no attempt to keep any. Talk of keeping a secret that was within the knowledge of the editor of a newspaper and at least one full grown woman,—talk of keeping that a secret!—There was no secret to be kept, relating to the divorce. If it was a simple interview relating to the divorce, why conceal it in that way from his lady? Why take those precautions against the curiosity of Mr. Ingham? Because it was a private and indecent interview and ladies will rebel against such things. Even when their own special marital rights are not violated, they do not like to have their own houses prostituted; no more in Madison than in Waukesha, where Mrs. Jones was hardy enough to reprimand Mrs. Howe for her judicial interview. What next have we? The Judge did not know that sleep had baffled Ingham's curiosity, and we have him next day, soliciting not forgetfulness, for he had not then tried the infirmity of Ingham's memory, but soliciting secrecy. That weak memory remembers that it was so solicited. Oh, distinctly! He remembers the fact. He knew, too, before he was talked to, that it was Judge Hubbell who solicited him; but since he was talked to, really he would not undertake to say who it was. He remembered too at least a part of what was said to him; he remembered who it was who said it and why it was said; but when he came to think over all that had been said to him by the defendant here and his friends and what he calls his own further reflection, he tells us that he cannot say who it was. Poor Mr. Ingham has a paralysis of the memory. But he remembers that some one did call at the house to see Mrs. Wyman, and before he was talked to he did remember that it was Judge Hubbell. Some one told him not to speak of that interview, for he had enemies and they might make harm out of it; that he was only there instructing this poor lady in the principles of divorce. And before he was talked to, he knew that this was Judge Hubbell. Why thus tamper with the witness then, whom he bullies now? Why thus abet Seymour's silly mystery, if that interview was innocent? Because it was a private and indecent interview. Seymour concealed it from his wife, because he knew it would be one. The defendant sought both to disguise its character from Ingham who had disclosed his knowledge of it at Seymour's breakfast table, and to secure his secrecy, because he knew it had been a private and indecent interview.

I do not know whether Mr. Seymour's memory has undergone the same paralytic affection visible in Mr. Ingham's. He may have overcome the external symptoms of the disease, so that it cannot be detected as apparently in him. But take his story as it is. He tells you that he was gone out of that room a minute or half a minute, but that he could see into the room all the time. Now, if Seymour went to the head of the stairs, as he tells us that he did, he could not see into Mrs. Wyman's room, unless his eyes were endowed with the miraculous obliquity of the Irishman's gun, which shot round the corner. Mr. Atwood tells you that the door was at the side of the hall, some six or eight feet from the head of the stairs: and Seymour tells you that he walked to the head of the stairs to meet Mr. and Mrs. Atwood, and yet that he saw into the room, saw its fair tenant and her visitor all the time. Mr. Seymour is evidently a man of great penetration. I hope that the wonderful squint of his vision has not been communicated to his testimony. Assuming positive and minute recollection in trifles, Mr. Seymour is grossly and suspiciously inaccurate in them. I cannot object to the miraculous scope of Mr. Seymour's wonderful eyes; but

I protest against the impossibilities which his testimony presents to our credulity. His sight may traverse the angle of the wall at will, but his evidence cannot so readily double the corners of reason in your consciences. Mr. Seymour's recollection is at fault, or his evidence is false. We cannot believe in impossibility, simply because it suits Mr. Seymour to swear to it. A great deal hangs upon the accuracy of Mr. Seymour's memory, of which this is a test; a great deal depends upon the accuracy of his statements in this very particular itself. How and why is Mr. Seymour able to remember with such dogmatic precision, after the lapse of years, that he left the street door open, and yet could give no reason for leaving it open, except that he did not shut it? How and why remember the precise distance he walked when he left that room? How and why remember so positively the shortness of his absence? How and why remember that he was able to see into that room, and did in fact see those who were in it, the whole time he was out of it? How and why, at the end of years, all that precision and assurance of memory, and then all that loss and concealment of memory of the attempt made by him at the time, to make a secret of that interview? I will not conjecture upon it. I will not argue what happened there. Other proofs in this cause give significance to that interview, and interpret its suspicious peculiarities. It was a private and indecent interview. The circumstances proved make it *that*, however long, however short, it may have been. And against the presumption raised by the character of that interview, against the reluctant and trembling recollection of Ingham, that it did last long enough for all the purposes of indecency, you have only the dogmatic and suspicious assurance of Seymour, whose memory is certain only in what makes for the defence—whose memory of the length of his absence from the bed-room honored by the judicial presence, is coupled and identified with the twin assertion of his seeing the parties all the while through the solid wall of the room. Wrong in the one, he is not likely to be right in the other. Incredible in the one, he cannot be credited in the other. But for whatever time the privacy of that interview between the couchant lady and her Judge may have lasted, it was indecent. Take Seymour's and Ingham's testimony as it stands. Let that interview so proved between this Judge and his fair client, be an interview between husband and wife separated before and after: let issue follow from the womb of the wife: in such a case, Mr. President, go with this testimony, as it stands, before any court, and it is sufficient proof of access to legitimate the issue. It is not essential here to prove criminal intercourse. If criminal intercourse were intended but not consummated, the interview is not the less indecent. But an interview may well be indecent without a purpose of ultimate pollution. Many interviews are notoriously so. Enough for me that this interview between the Judge and the lady in her bed-room, where she lay nude in bed, and where Seymour, on his own showing, left them *solus cum sola*, was pivate and indecent.

They undertake to account for the peculiarities of that interview. They say that the lady was sick. They say that she took no part whatever in that interview. Why, then, go there to her sick bed-room? They say that it was to be a consultation of Seymour, Atwood and his wife, with Judge Hubbell, not of Judge Hubbell with Mrs. Wyman. Why, then, in the name of decency, intrude into the sick room, where that sick lady was lying in her bed? Why could not that judicial consultation take place, in decency, elsewhere? Why

could not that judicial consultation take place in Seymour's parlor, aye, even in the presence of jealous Mrs. Seymour, whose eyes were blinded, whose ears were deceived, to the honor to her house of the judicial visit? Why should it take place in his house at all? Why not anywhere but in that sick bed-room? They tell us, because they wanted her to hear from Judge Hubbell's own mouth, that proceedings for divorce in his Courts could be managed very delicately indeed; that there was there no need of the indelicate publicity of other Courts under less delicately minded judges. I asked Mr. Seymour whether this lady would not have believed him, if he had consulted Judge Hubbell somewhere else and then reported the result to her. I asked him, why he had not ascertained the judicial views elsewhere, in an interview not private or indecent, and told the result to the lady. Really, Mr. Seymour could not tell. No, Mr. President; the presence of the judge with the lady was essential to the purpose. There was to be some mesmeric influence, some mysterious current of the Odic force, put in play by the presence of the Judge in the lady's bed-room. There the interview could accomplish its end; elsewhere it could not. I do not know or care what may have been consummated in the interview. For any decent purpose, it was a useless, unseasonable, and indelicate interview. In any other man it would be more than equivocal, in him it is pregnant with indecency. His counsel says for him, that he is constitutionally civil to all whom he encounters, that he is constitutionally unable to resist approach. The proofs here affirm that character; and though his counsel did not distinguish between his politeness to the sexes, the proofs here do him more justice. He may be unable to repel the approaches of men; but the evidence shows that he is too gallant to await the approaches of women. With them, he descends from his moral elevation and graciously assumes the initiative. This is to be suficiently seen in the little that we know of the interview with Mrs. Pope; this is to be seen in the considerate alacrity with which he so delicately testified his admiration, in word and deed, for Mrs. Howe's pretty little body. These are the logical antecedents of his private presence by the bed-side of Mrs. Wyman; these are the evidences of the chaste spirit in which he enters that lady's sleeping room, where she lay in night's snowy drapery, in bed. And this is the same judge who was shocked in his sensibilities, whose modesty was indignant—such is Seymour's unsophisticated version to you—because he was led to that bed-side, guarded against all mesmeric afflatus by the protecting presence of two men and one woman. He rebuked Mr. Seymour, but withheld the rebuke with great self-possession, until the advent of Atwood and his wife furnished ample proof of its administration. He sat by the lady's bed-side with Seymour, Seymour deserted his post and he sat there alone, passive and uncomplaining. Atwood and his wife came; and then, sir, his pent modesty broke forth, and he rebuked Seymour in good set phrase in the presence of witnesses. Mr. President, how shall we divide our admiration, in these trying circumstances, between the child-like faith of Mr. Seymour in our credulity and the fastidious delicacy of the defendant's modesty? Aye, Mr. President, he decidedly rebuked Mr. Seymour, he reprimanded that dangerous gentleman with severity, for having betrayed him into a lady's chamber when the presence of others had taken the edge off temptation! That cuuning, overreaching, profound old fox, Seymour, had dug a pit for the Judge, and the poor, innocent Judge had fallen into it; he caught his personal and judicial friend in a trap, baited with a woman, and the bait

was not at all to the Judge's liking—perhaps it was the person, not the sex, at which his taste rebelled—and the Judge reprimanded Seymour! Credat Iudeus! How does this tally with Seymour's subsequent efforts at concealment? How does it tally with the defendant's own subsequent efforts at concealment, defending the innocence of the interview, but not denying his own willingness to hold it, nor laying the blame upon the subtle temptations of that sly serpent, Seymour? Sir, if the Assembly had not rebuked that interview in this Specification, the world would never have been edified by the chaste severity of this judicial rebuke to Mr. Seymour.

I have not considered the testimony of Atwood and his wife. I do not deem it essential to spend time upon it. Certain it is, that Atwood and his wife were not present during the whole interview. I cannot assume to say whether it is the same occasion, the same interview, to which Ingham and the Atwood's testify. It may be the same, and the Atwoods may have been present only at the afterpiece. It may have been another. Such recollection as fear spares to Ingham, tends to give us that impression. There is something suspicious enough in the fact that the visit of the Atwoods was without Mrs. Seymour's knowledge; but I forbear to inquire into it. But the testimony of Atwood and his wife does not cover the whole interview; and if it did, it could not take from it the odor of indecency given to it, by all the circumstances of it which we have been able to draw out. I put it to the conscience of every father, brother, husband, in this Court, if that interview was decent—if he would take Mr. Seymour's testimony, Mr. Seymour's reprimand, to save that interview with this defendant from damning indecency, in the case of his own wife, sister, daughter? Sir, it is an insult to the honorable faith of man in woman, to expect so thin a veil to hide the suggestions of that interview.

Enough, then, of this. Enough for me, in another aspect of this case, that the interview took place at all. It is admitted that it took place in contemplation of the divorce. It is admitted that the divorce was the sole subject of the conversation there. It was a judicial interview preparatory to the contemplated divorce. That is enough, in one aspect of this specification.

Proceed we now to the evidence of Wyman: to the poor, duped, pitiable husband of this divorce; the timid, abashed, lank, ungainly witness, whose peculiarities the gentleman has assailed and baited here so ungraciously and unmercifully, but whose truth and integrity are above all the assaults of ridicule: to this poor husband, whose family was broken up, and whose wife was divorced from her duty to him and them, in mockery of all rules of evidence, upon her own complaints, proved as uttered out of her own mouth, and taken as grounds of divorce in the Circuit Court of Milwaukee County. Read that proof—I cannot stop to read it to you—and you will find the body of it to consist of the declarations of Mrs. Wyman herself, her own complaints of her husband's wrongs to her, physical and moral. They make nine-tenths of the body and weight of that evidence against him. In addition to the proof of these scolding complaints of the wife against her husband, there is, I believe, some vague evidence, that shortly previous, when Wyman went up on a visit to Minnesota, he left his wife so ill provided with the necessaries of health and sickness, that her friends had to lend her some potatoes and tea, some castor oil and other medicaments! And that is about the sum and substance of the testimony on which a divorce was solemnly decreed, on the grounds of desertion

and extreme cruelty, by the Circuit Court of Milwaukee county. Our statute was then substantially the law of Scotland in this respect. Subsequently the legislature in view of the decisions on extreme cruelty as a ground of divorce, saw fit to incorporate a provision to make *moral* cruelty a ground of divorce. But as the law then stood, nothing short of actual physical violence constituted the extreme cruelty of the law of divorce, as it was recently re-affirmed in a Scotch case, upon very full argument and upon the unanimous opinion of the law Lords, in the English House of Lords. Well, in view of this extraordinary proceeding, Wyman, too, consults the Judge about a divorce. Wyman, it seems, himself seeking a divorce, had learned in some way or other—from his counsel perhaps, or from the public understanding of the practice of the courts in the second judicial circuit—that he should first consult the judge upon the subject; and so he sought out the Judge with his complaints. Fatally, however, for Mr. Wyman's hopes, the Judge appears in the mean time to have seen the lady. And notwithstanding his disgust at the pit-fall into which Seymour had betrayed his chaste dignity; notwithstanding the cautious reserve with which we are told he refused to listen to all discussion of divorce; having repelled, as we are assured here, all ordinary modes of instruction in the matrimonial grievances of Mrs. Wyman; he appears to have acquired, by God knows what inscrutable judicial mesmerism, a familiar acquaintance with the wife's complaints, and an abiding sympathy with her wrongs, which the artful and cruel husband could nowise mitigate. He tells Wyman in effect: "You have been a naughty husband, Mr. Wyman; *you* can't have a divorce; but your wife and her friends tell me such and such stories about you; *she* can have a divorce, Mr. Wyman." He rejected the evidences of Wyman's affidavits in favor of he tell-tale sorrows of the wife. But while true to his interest in Mrs. Wyman, he was not false to the polite facility of which his counsel tells us; and though he repelled poor Wyman's complaints, he took care not to dash all his hopes to the ground. It is true that the law prohibits divorces by collusion. It is true that Judge Stow appears, somewhere in this case, to have adhered with ungracious integrity to that unaccommodating rule of the law. But not so here: Wyman must not quit the judicial presence hopeless. "You cannot have a divorce, but your wife can; that will serve *your* purposes as well, Mr. Wyman." The counsel ridicules poor Wyman as being anxious about two things: he liked a divorce, the counsel says, but did not like to pay too dearly for it; and, again, he liked a divorce from his wife *in esse*, but had one eye upon another wife *in posse*. His two great causes of distress then, urges the counsel, were money and another marriage. I have very little experience in the law of divorce; but I apprehend that money and marriage are at the bottom of all divorces, and that Mr. Wyman was neither better nor worse than other suitors for divorce, in that respect. The learned gentleman may be better instructed; but for myself, the first case of divorce I ever had, some fourteen years ago, cost me the confidence of my client, and all desire of practice in the law of divorce. I had no experience in it then, and was proceeding as rapidly as I deemed necessary with the case, but my client understood her case and its exigencies far better than I. She, it appeared afterwards, intended, as the gentleman accuses Wyman, to get divorced first, and re married after. Well, I told her, that at a certain term of the Court I would obtain a decree for her. She took me at my word; and though I failed to get the decree at that term, she did not fail to get a

new husband immediately after. My inefficiency reversed her purpose, and she was re-married first, and divorced after; and her reproaches of my failure to comprehend the uses of divorce, somewhat damped my liking for the practice, and I have had little to do with it since. But it seems to me, small as my experience has been, that this assault on Mr. Wyman would reach most or all applicants for divorce. And it seems to me no sin in him to look forward to another head of his household, another mother for his children thus a second time orphaned.

Well, it seems that Wyman was desirous of having liberty to marry again. It seems, too, that he became satisfied in that interview, that the Courts of the second judicial circuit held the principles of divorce too sacred, to restrain either party from another marriage or, if necessary, from another divorce. It seems that thus advised, he assented to submit to the divorce he could not himself obtain. An admirable conclusion from a consultation with the Judge, whose duty it was, not to prompt, but to punish collusion; not to smooth the way to divorce by collusion, but to refuse divorce upon collusion. The Judge assured him that a divorce in favor of his wife against him, would leave him free to marry; that all his ends would be as well served by a divorce in her favor, as by a divorce in his favor.—A direct suggestion of collusion. A suggestion admitted here by the defendant to have been made by him *jestingly*. A pretty judicial jest, the suggestion of collusion where collusion is abhorred by the law. A suggestion understood and acted on by Wyman; it was no jest with him.—It is impossible to resist the conclusion that collusion sprang from that suggestion and followed throughout this suit. This is the effect of Wyman's testimony, and Wyman is a respectable man and a respectable witness; whose testimony is unimpeached; whose very timidity and simplicity, so ridiculed by the counsel, give us faith in his truth; whose weight as a witness is undisturbed by the unseemly insults of the defendant. This is Wyman's testimony; and as far as it goes, it is a faithful history of the cause, and it affords a clue to much of the subsequent history of the divorce. The marks of collusion follow it throughout from that interview, in which collusion was thus suggested to the husband. All this happened here in Madison during the term of the Dane Circuit Court. Up to that time Mrs. Wyman had not determined upon applying for a divorce. Their own testimony shows that, for whatever reason, she would not and did not determine to apply for a divorce, until she was enlightened by the judicial interview, though they deny that it enlightened her at all. Up to that time, then, the wife was doubtful of applying. The husband had taken no steps in Court, but did then apply to the Judge in private, had been baffled of his hopes of obtaining a divorce himself, and had submitted to the suggestion of gaining his ends by suffering his wife to obtain one. All this was in Madison. All this was during the session of the Dane Circuit Court. And mark this, Mr. President. The defendant has accused Wyman of lying on his oath. Let us see who the liar is, who speaks the truth here. Mark this, Sir. The answer of the defendant to the new specification on this case, indiscreetly departs from the general denial of his old plea. It tells us that his conversation with Wyman was *after* Mrs. Wyman had commenced her suit.—That, if true, might mitigate its character. But what is the fact? Wyman's conversation was in Madison, during the Dane term of Court: that is not denied and is evident by all the circumstances. Now, Mrs. Wyman's

petition was not presented or filed, no steps taken to commence her suit, until *after* the defendant had left Madison for Jefferson, the next Court in his Circuit? But in hot haste a petition of the lady follows him there. Mr. Collins—and it is natural enough that his memory should be very indistinct on the circumstances of that case, he can hardly remember any thing except that he obtained the divorce,—Mr. Collins cannot tell us where he drew that petition. But I think I can find the place for him.—The negotiations which I have dwelt upon came to a conclusion about the end of the term in Dane County. The Judge followed on to Jefferson county, and I suppose Mr. Collins followed the Judge. Examine this record and you will find that that petition was not signed by the petitioner. It is signed by Mr. Collins for her. If it had been drawn in Madison, the woman would unquestionably have signed it; but it was undoubtedly drawn in Jefferson and signed by Collins because the woman was in Madison. An order was there immediately made to take proofs. Was that petition addressed to the Circuit Court of Dane County, where both these parties lived? Did that order purport to be made by the Circuit Court of Dane County, which I contend alone had jurisdiction of the case? Was that order sent back here to Madison, where the proofs were to be taken? No such thing. The domicile of the parties was avoided; the venue of their disputes was avoided; the locus of those interviews was avoided; and the cause and the order were sent away out of the scope of scrutiny, out of the reach of the gossip of Madison, out of the reach even of Mr. Ingham's curiosity. It was sent to the extremity of the Circuit. It was sent where it had least business and would attract least notice. It is sent to Milwaukee, where neither of these parties were known. The gentleman read the statutory jurisdiction of the old Territorial Courts. I apprehend that the general provision is restrained by the particular provision of the same statutes, that no defendant shall be prosecuted in any county where he does not live. But if that was the practice, I would not urge it as a violation of law. I only urge it as tending to establish the charge, that the collusion suggested by the Judge was adopted, and colors the cause throughout in glaring evidence of collusion between these parties *inter se*, and between them and the Judge. That old statute as I interpret it, for I never practised under it, and know no judicial interpretation of it, required a notice of thirty days to be given to the defendant, when both parties resided in the Territory. Here no notice was ever given, no process was ever issued. The order to take proofs was made; the petition was then filed; service of a copy of the order was admitted by the defendant; proofs were taken by Collins, Mrs. Wyman's lawyer, were hurried on in hot haste, and when completed were sent to the Judge under an envelope directed to him personally. And upon them, such as I have described them, a divorce was granted, signed, sealed and delivered by the Judge at Chambers, without opposition; with the assent of the defendant Wyman; without ever being exposed to the light of Court, or the scrutiny of a Bar. I tell you, Mr. President, that there are marks of collusion all about it, from the beginning to the end of this judicial comedy, in which the parts were dramatically distributed in advance, but were not so artfully played that we do not see the juggle. And I say to you, sir, that there is not in all the evidence in that case here in my hand, one scintilla of evidence, one mote of fact, on which by the law of the land, a divorce could be founded. Look at Wyman telling his lawyer to resist just what would be irrelevant—to resist anything offered outside of the petition, but

to make no objection to any proof within the petition. No objection was in fact made to all the irrelevant and incompetent evidence given; there was no cross examination; and yet that lawyer cannot for his soul see any evidence of collusion! George B. Smith tells you, and tells you the honest truth, that nobody could tell where that petition was filed. We naturally supposed that it must be in Dane county, and we looked for it there, but it was not there. We were then told by everybody of whom we inquired that it must have gone to Jefferson county; but when we finally sent to Jefferson county, the clerk wrote that there never had been any such cause there. This accounts for the mistake of the Court in the original Specification. Mr. Collins could not then remember the course of that cause as he does now. Long after I saw him in Milwaukee, I told him our trouble, that the record could not be found, and asked him, whether Wyman and his wife were divorced by word of mouth. He asked if we had tried Dane? I replied we had. He then asked if we had tried Jefferson? I answered that we had. Then he inquired if we had tried Milwaukee! I tried Milwaukee and found the record. But I did half suspect for one while, that the divorce was a divorce by word of mouth.

Such, Mr. President, are the damning evidences of collusion throughout. And, Sir, I claim that notwithstanding the paralepsis of Mr. Ingham's memory, whose testimony on the stand is a negative pregnant; notwithstanding any doubts which may be cast upon the case by the dogmatic confidence of Mr. Seymour's memory in what makes for the defence, with all the doubts that rest upon its accuracy; the charge here is established beyond any reasonable doubt, that there was an interview—I do not care for the main purposes of this specification, whether indecent or not; that is mere adjective description; that there was an interview between the Judge and the wife and another between the Judge and the husband; that he did give them his judicial advice; that he did suggest collusion and that the divorce did follow upon that suggestion, by collusion, without any reasonable cause, and as I believe without any jurisdiction whatever in the Court in which this shamefully collusive and indecent proceeding was consummated.

We come now to the next specification, number 2 of this Article; the interview between the Judge and Mrs. Howe in relation to the indictment for perjury against her husband. The gentleman says that Mrs. Howe contradicts Mr. Finch, and that Mr. Finch's memory is exceedingly astray.—Finch testifies to you that the Judge told him that the interview had relation both to the new trial of the civil suit, and to the indictment which had been just found against Howe. Mrs. Howe tells you that she did not know of the indictment then, and that she and her husband did not know of it till a day or two after. And therefore the gentleman jumps at the conclusion that Mrs. Howe knows human nature so much better than Finch, that we should trust to her memory and not to his. The Judge himself is Finch's authority. It was no possible object to Finch, it was no possible object to us, to say that the interview related to the indictment, any more than to the new trial. The guilt of the interview is not charged by the reference to either suit, in preference to the other. I have inspected the record of the case in which the new trial was granted, and if I had the opportunity of going into that case, I would prefer to have this specification founded upon it. In that case, a motion for a new trial was filed four days after the verdict, two days too late, and not brought up at that term of

the Court; judgment was then entered up; and some term or terms after judgment, that stale motion for a new trial, never properly within the power of the Court, was called up, prevailed and vacated the judgment; the first time I ever heard of a motion for a new trial prevailing against a judgment regularly entered up. When the motion did come up, it was founded upon an affidavit made by Mr. Byron long after the judgment was entered up and founded on that alone. Mr. President, I am wrong; it was founded in form on Byron's affidavit, suggested by the Judge to Mrs. Howe, but founded in reality on this interview with Mrs. Howe, as her testimony shows. And, Sir, I would rather for the purposes of this argument, that this specification had been founded on that new trial than upon the indictment, so that if we had a choice in framing this specification, it would be in favor of the new trial in preference to the indictment, because the new trial presents a much clearer case than the indictment of judicial departure from the law, in tenderness to Mrs. Howe's solicitations. And it was no possible object to us, it could be no possible object to Mr. Finch testifying before this specification was framed, to prefer the indictment to the new trial. Not so with Mrs. Howe, testifying here for an acquittal deeply interesting to her, after the specification is framed and must stand or fall as laid. It was her cue to avow the new trial and ignore the indictment. But what brought Mrs. Howe in such hot haste to Waukesha, to solicit an interview with the Judge solely about a verdict which had been rendered and standing for months?

Judge HUBBELL. Not for months.

Mr. RYAN. I beg your pardon—it had been for months, as the record shows; and Mrs. Howe herself tells you, she knew about it for some time. What brought her then in such a hurry to see you, if not the indictment against her husband then just found? She posted with her husband to Waukesha at the beginning of the term, when they must have known that the Grand Jury were to act on the charge against Howe. No doubt they heard then of the indictment. No doubt she sought to fascinate him on both subjects; but which really was the exciting cause of her visit, the old verdict or the fresh indictment? And why should the defendant tell Finch that the woman was pestering him both about that new trial, and about that indictment, if such was not the fact, if the indictment had not then been found? I oppose the account given by the Judge, against the account given by the lady. I oppose the oath and accuracy of Mr. Finch against the oath and knowledge of human nature of Mrs. Howe. I oppose the more rational and probable account, against the less. I oppose the less suspicious testimony, against the more suspicious. I oppose Mr. Finch, a lawyer of repute, with character at stake, and without inducement to mislead us, against Mrs. Howe with all her concomitants in this cause. And, I say, that we are warranted in believing, that we are driven to believe by the force of the testimony, that the interview did relate as well to the indictment as to the new trial. And we have proved, though the gentleman cannot concede it, we have proved the ruling out of testimony in the trial of that indictment which, admitted, would probably have convicted the accused of the crime. The Court will recollect the testimony. It seems that two parties had made a contract. Their contract was executed in duplicate, each party retaining one part, and attaching to the part held by the other a note in favor of the other, by way of penalty for breach of the contract. A. agrees with B. to

buy B.'s horse, and to pay for him within a month $100, and executes as part of that contract, and appended to it a $25 note in favor of B., as a forfeiture. B. agrees with A. to sell his horse for that price within that time, and executes as a part of his contract, and attached to it, a note for $25 in favor of A., as a forfeiture. One of these notes is torn off from the contract to which it was attached, and is sued upon. It becomes a question whether that note had not thus formed a part of the contract as a mere penalty for the breach of it. It appears that Howe held one part of such a contract,—I forget whether he owned it or not. It appears here that, in the action on the note, he swore that to his knowledge the note was never part of such a contract. The note appears to have been torn off, and was produced separate from the contract. It is in evidence that he stated on oath, that to his knowledge that note had never been attached to such a contract. He is indicted for perjury assigned upon that oath. What proof is offered on his trial? As I understand the evidence here, first, proof of the oath which had been taken; secondly, the prosecution offered to prove that the note had been part of the contract as I have explained, that *it* had been torn off, and that Howe knew that it had been so a part of the contract, and had been torn from the contract. The prosecution then, in order to establish the nature of the note and the contract of which it had been a part, and of course not having access to the part which had been torn from the note, offered in evidence the counterpart, an exact duplicate of it: but that evidence was ruled out by the defendant. It was good evidence, pertinent and competent evidence, to prove the contract, and what the contract was of which the note had formed a part. It was ruled out, and Howe's acquittal followed of course. The prosecution could not make a case without proving the contract, and they had no other means of proving it. The rejection of the evidence settled the acquittal of Howe. This specification is proved as laid, and we claim the judgment of this Court upon it.

I do not propose to dwell much upon the first Specification. The counsel and I take very widely different views of that Specification, and of the evidence upon it. It is the case where the Judge agreed to hold a special term of Court for his friend, after having refused to hold it for one he deemed his enemy. The gentleman says that it is mere matter of Judicial favor to hold a special term at all. He says it was the Judge's right to refuse to hold it for one who had been his enemy, and to agree to hold it for one who had been his friend. I admit that the holding of a special term is a *quasi* favor; but I deny, I repudiate—I ask this Court to repudiate—I ask it to be given forth to the people of this State, to the whole world, that the heart of this Court beat with indignation, when it was announced here—the claim here gravely and solemnly set up—that judicial favor, the favor of our Courts organized for the administration of equal and impartial justice to all, is to be distributed by the Judge, to reward his friends and to punish his enemies. God forbid that we should accept the morality of one of the counsel, when he exclaims "if *that* be corruption, give me a corrupt judge." If that be the morality of our judiciary, if that be the spirit of our judicial system, for God's sake destroy it from off the face of the earth. Let it not live. Strike it down by the strong arm of legislation by which it lives. Suffer it not to go forth to the world, that our Judges sit upon the judgment seat to grant or to withhold judicial aid, as personal favor or revenge. Granting it to be a matter of mere discretion resting in his own breast,

whether a Judge will or will not hold a special term, it rests in *judicial* not in *personal* discretion. Judicial discretion is not a tyranny to be exercised in arbitrary will; but a public trust to be exercised, under circumstances where the law can prescribe no fixed duty, in sound judgment of right. And what is that judge, who sitting on the bench, to know there no fear, favor or affection, says to one, "You are my friend, I will do it in favor of our friendship;" but turns to another and says, "You are my enemy, and because you are my enemy, I will not do it?" Who says to him in Canning's doggerel,

"I give thee sixpence?
I'd see thee d——d first."

Such in substance was the defendant's answer to Kilbourn, when asked to confirm the sale in Kilbourn's favor. But when it turned out that Kilbourn had no interest in the time of the confirmation, as it made no difference to him from which tenant his rent accrued; when it turned round that it was Sawyer who was interested in having the confirmation at once; when it turned out that under the wing of the enemy Kilbourn, fluttered Sawyer, the friend, and that the shot of judicial vengeance hit the wrong man: "Ah," exclaims justice, "that alters the case." Sir, he might quote in his behalf the oldest case in the books, certainly the first I ever read of law or judgment, reported in every child's primer; the familiar case of Ox *vs.* Bull, in which it is laid down that it makes a great difference whether the lay ox gores the judicial Bull, or the judicial Bull gores the lay ox. Sir, I confess to that authority, but I deny all other authority for the defendant's distinction. "That makes a difference," reasons the judge; "Sir, I have refused this favor to my enemy; but, sir, come to me as a friend, be my friend, and to reward your friendship, the machinery of my Court is at your service." Is that the philosophy of the elective judiciary, shadowed forth here by the defendant's counsel? Are judicial favors which rest in judicial discretion, are the terms and machinery of the Courts, is the judicial discretion of the time and order of judicial business, is the judicial discretion to give or to withhold which enters into the whole administration of justice,—are these the personal privileges of the man who happens to be Judge?—Weapons held in his hands at the bidding of his personal impulses, to punish them that hate him, to protect them that serve him and do his will, to chastise or conquer enmity, to reward or purchase friendship, to play upon the hopes and fears of all? Is it the Judge or the man who sits upon the bench? If passion may guide such discretion, why may not money reward its exercise? Is this indeed the spirit of your elective judiciary? Is this what the gentleman meant when he said his client rightfully sought popularity among his constituents, that the system drove him to it for re-election? Shame on such popularity! Shame on such means! Shame upon such a principle! I ask this Court to tell the people of this State that the elective judiciary is not that shameful thing; that it was not founded to exterminate the human sense of justice; that it was ordained for the administration of justice, and not as the machinery of personal ambition or personal passion. To tell me—for that is in principle what I am told—that if hereafter I go to the Judge and ask him to do for my client a judicial act, whether within his discretion or not, he is to tell me; "Sir, no; you prosecuted me before the Court of Impeachment; I will do no favor for you or your client."—And when I send the client I cannot serve, to Mr. Arnold, and he applies for what I failed to obtain—he forsooth is to be an-

swered: "I refused my old adversary, and my revenge is fed; you, Sir, defended me before that Court and I will grant what you ask that my debt of gratitude may be paid." Mr. President, Senators, is that your standard of law and justice in the second judicial circuit? That is the standard set up here by the argument of the defence. I am not astonished at its spirit; I have lived too long in the second circuit. I am astonished only at the effrontry of the avowal. It resolves itself into a simple proposition, a monster in morality, that judicial discretion may of right be governed by the personal passions or interest of the Judge. This principle is sent forth from here by the defence, to shock the moral sense of mankind; and I have no doubt is the sincere conviction of this defendant, felt and avowed by him without shame, in the doctrine thus announced in his behalf.

But let us go a little further into the proof. Kilbourn was as much entitled to the confirmation of that sale, as Sawyer was. What had Kilbourn done to forfeit his judicial rights; to forfeit, if you please, his claims on judicial favor? Is he an infamous man? Is he a man so disreputable that the Judge may spurn him from him and refuse all favor and countenance to him? Is he, to borrow language which is begining to immortalize our bar, 'like a shark that gets up in the morning, sits down to his breakfast, mouses around all day, and lies down at night like a dog?' I am no peculiar friend of Byron Kilbourn. I am no advocate of his. We have stood at arm's length all our lives. But Byron Kilbourn is an honorable gentleman and a man of great usefulness in the community in which he lives. His integrity and ability command there a high position and would command it anywhere. What then had Byron Kilborn done? Oh, he has denounced the Jenny Lind Club! Sacred Heaven! Is it possible that so respectable, so discreet a man as Byron Kilborn, a man who holds in such esteem all the established respectabilities of life, has been so insane as to raise his sacrilegious, blaspheming voice against the sanctities of the Jenny Lind Club? Is it true, does it leak out at last, what has been whispered for years, that the name of the Milwaukee Circuit Court is a lie,—that it is the Circuit Court of Jenny Lind? I am not going to descant here upon that Club. I will say one thing however. It is no harmless singing school—I believe that was the defendant's term. There are other lessons than singing, I believe, taught and learned in that school. But this is not the place to dwell upon the mysteries of that sanctuary, which it seems that Kilbourn could not claim.

Judge HUBBELL. Give us a speech upon it, Mr. Ryan.

Mr. RYAN. I could make a speech upon it, if speech I chose to make. I could make a speech upon it that would arouse the universal heart of this people. I could show it up as a political harlot, which seeks to destroy those who oppose it, which inflicts a deeper destruction upon those who trust to its embraces. It is an incubus in Milwaukee, a dreaded influence pervading it, like a secret police, feared every where, felt every where, seen no where. It is in the courts and the churches, in the highways and the homes, in the marts and at the polls, in the private pursuits and public concerns of Milwaukee; and in the main it rules Milwaukee. See that it does not rule the State. Woe to them who tamper with it, for its name contaminates. Woe to them who fight it, for it has power to stab in the dark. Woe to those who bargain with it, for it betrays all who trust it. It is like the Syren whose music enticed to ruin,

whose kisses were treason, whose embraces were more fatal than the harlot's burning gift of corruption. The Jenny Lind Club has power and can confer power; but power is not life. What is power that a man should barter for it his independent manhood, and merge in a meretricious combination, all healthy dignity of life! Make a speech upon it! So I could, Sir. It may be that few care to speak so plainly; but I have long heard a quiet echo of the judgment of Milwaukee, the voices of many who hate it but fear it, the voices of some who hate it and do its work: and what I have been here provoked to say, I believe to be the judgment of Milwaukee; fast becoming the judgment of the State. And Byron Kilbourn, bold, unmannered, irreverent man, had pointed his sacrilegious finger at its shrine, had raised its rude voice in censure against its mysteries! So the Circuit Court of Jenny Lind told him that he should have no favor there; but Amos Sawyer, who was the Judge's friend, came forth and claimed an interest; and though he might think just as much of the Jenny Lind Club, yet he had not said it quite so loud. To him then the Judge responds—"Oh! certainly, if *you* are interested, I will hold the special term." A poor young lawyer, who acted for them both, goes to the Judge, and says that it would be a personal favor to him, to be sure, but that he felt modest about asking it. He was diffident about troubling the Judge's Honor: it was, he felt, a mere matter of professional courtesy and favor. But the Judge extinguishes that little man's timid advances in this trenchant style: "Mr. Mariner, you must not work for such men as Byron Kilbourn." He tells the bar, by the God of Heaven! whom they shall take for clients! He tells the world that no lawyer at his bar shall hold his favor if he dare to advocate the cause of those in his displeasure. I tell you, Sir, (turning to the defendant,) that when you dictate to the bar, you do not know the bar. I am proud to say it to you, face to face, before this solemn Court, that you do not know the spirit of the legal profession. You may have been of it longer than I who say it, but you have not belonged to it long enough to learn the high and honorable spirit of the profession. To dictate to an honorable young lawyer, whom he shall take for his client, whose legal rights he shall assume to advocate! The legal profession has done many bad things and has produced many bad men; but it is a glorious old profession, and I love it and am proud of it. It may do in these days for demagogues to denounce it; but I say now and always, here and elsewhere, what all history proves, that there was seldom a great stride made in human progress, in which the bar was not a moving power. It is an honorable profession, an independent profession. No judge has ever yet cowed it or broken its independence. Touch its independence and it rebels to a man, shoulder to shoulder, standing up against the invasion of its rights. A corrupt court may disorganize it; but a tyrannical court can neither bend it nor break it. The relation of a lawyer to his client is a peculiar and important one. Life, character, liberty, property, all that is dear and sacred in life, are the trust of the client to his lawyer. The world may assail, the world may persecute, death and ruin may overhang, all men may desert; but the unfortunate is ever secure in the zeal and loyalty of his advocate. And this is the relation the defendant tampers with; this is the profession he seeks to bend to his caprice or his ambition; this is the professional spirit he insults in the person of my friend, Mr. Mariner. Mr. President, this defendant does not know his profession; does not know the bar of his circuit. He has mistaken the temper of the

bar, as he mistook the honor of Mr. Mariner, when he assumed to dictate what rights, what clients, the members of the bar practising before him were to represent. I do not know my brethren, or, let this prosecution end as it may, he will not find them all sycophants or all parasites. The spirit of the profession, its inherent loyalty and independence, are able to endure a longer and severer trial.

Mr. President, Mr. Mariner was judicially told that he must not have for clients such men as Kilbourn. It is not in proof here that clients are told the converse of the proposition, what lawyers they must not employ. But it is in proof that lawyers are told their clients must be the Judge's friends; and it is argued for the Judge that this is all right, the proper exercise of his judicial privilege, the legitimate distribution of his judicial favor! That is the avowed spirit of the administration of justice in the State of Wisconsin, in the living heart of these United States, past the middle of the nineteenth century! If that is your judgment of it, acquit this defendant. If your heart beat with indignation at it, disavow the infamous doctrine and punish its judicial apostle. But if you will not convict, if you will affirm the principle here claimed by a member of your judicial body in his own behalf, that—whether in those things which are of right, or in those things which rest in sound discretion—your judges, so long as they stop short of absolute violation of law, have the right to consult their own private passions and interest; that judicial discretion may be exercised in personal feeling or for personal views; if you will justify *that* judicial morality as the standard morality of your judiciary; do not shrink when you hear it said hereafter of Wisconsin, as it was said of old in Scotland, aye as it has been already said of one circuit in Wisconsin, "Show me the man, and I will tell you the law."

Proceeding to Article 6, I beg leave again to call the attention of the Court to the Statute:

"No Judge or commissioner shall be allowed to demand or receive any fees or compensation for services as such judge, commissioner or judicial officer, except where fees or other compensation are expressly given by law; and no judge, commissioner, or other judicial officer, shall be allowed to give advice to parties litigant, in any matter or suit pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or draft or prepare any papers or proceedings relating to any such matter or suit, except when expressly authorized by law."

I apprehend, Mr. President, that this provision of the Statute is but a declaration of a principle of the Common Law, older by centuries than any Statute we have. I read to you the other day the Common Law doctrine ably propounded in the case of Oakley and Aspinwall. I take that doctrine to be unquestionably true. I suppose that back of all constitutions and back of all Statutes, is the universally pervading moral principle of the law, that judges are to be impartial; and that all things which tend to render them partial in particular cases, disqualify them; that the scales of Justice are to be held by an unbiassed hand; that the friendship, or relationship, or interest, or connection of the judge with the parties or the subject matter of the suit, is not to be thrown, like the old conqueror's sword, into the scales to turn the balance of justice. In view of that principle, this Statute is framed. Upon this Statute, apply those moral principles of the law older than any Statute in the books;

by them, it is to be interpreted. Upon this Statute, so interpreted, the sixth Article is founded.

The second specification alleges—and it was proved in substance as alleged—that after a judgment had been obtained in the circuit court of Milwaukee county against Dr. Greves and another, Greves made complaints to the defendant about the injustice of the judgment; that the defendant listened to Greves' statements, told him that the judgment had been scandalously obtained and advised Greves to make a motion before the defendant himself, to vacate the judgment; and that Greves accordingly did so. This was during the judicial canvass, just previous to the defendant's last election.—Dr. Greves seems to have been one of Hubbell's supporters. He went upon an electioneering visit to the Judge's room. There the Doctor told his story to Hubbell and his friends, there with him conversing the chances and gossip of the election. The Doctor probably meant no harm. Though he is reputed to be in spiritual communication with the other world, you can see that the Doctor is no witch. He told his grievances as an electioneering story against Mr. Finch. He told it, I presume, in the same honest, good natured, prosy way he told it here in Court. He says he told it to explain his reasons for opposing Finch and supporting Hubbell. It appears that he had advised with Gen. See, and See had told him that he could not move against the judgment, and so he had dismissed it from his mind. They were all there telling stories against Finch, and he added to them his account of the wrongs that Finch had inflicted upon him, in the recovery of that judgment.—Well, what does the Judge say? Why, the Judge says to Greves that it was scandalous in Finch, and that the Doctor ought not to submit to it. Well, this was a new turn to the Doctor who had been talking, not for himself, but for his friend, the Judge; and he I suppose did very much as he did here—he scratched his head and spoke. He said he had tried that already, but that Finch was a very popular man among the members of the bar and he did not know who to employ to prosecute it. "Oh!" suggests the Judge, "that will occasion no difficulty; all the lawyers are not Mr. Finch's friends; Mr. Watkins or Mr. Ryan will do; that objection will not lie to them!" Well, Greves took the hint; he would like to be rid of that judgment, he had no objection to employing the lawyers named to him and acted on the suggestion. Mr. Arnold tells you that the affidavit appeared as an electioneering document against Mr. Finch. It did so; but I can say for myself that I drew it for no such purpose and that I had no part, consent or privity in its being published. I even went, at Dr. Greves' request, to some other gentlemen to request that it might not be published, after some steps had been taken to do it. While the Doctor tells his story in the Judge's room, comments are made upon it by the persons present; and Judge Hubbell, in this electioneering conversation, calmly and coolly sends the Doctor forth to a lawyer to make a motion to vacate the judgment; which motion was to be heard—by whom think you?—That solemn proceeding of setting aside a judgment was suggested by him—to be taken and decided before whom? Before Judge Whiton? Before some Judge not engaged in that election? Before some Judge having no interest in that election? Before some man whose passions had not been aroused, and whose selfishness was not interested in that electioneering story? No such thing! "Go and employ a lawyer, and approach *me* for redress of your grievances in that scandalous proceeding of Mr.

Finch, which ought not to stand; apply to *me* to set that iniquitious judgment aside;" that was the judicial suggestion to his electioneering friend. He made no promise, they say. Oh no, not a promise! And the gentleman thinks it is extraordinary that we prove no promise here. I never heard of a corrupt judge —I have read Bacon's, Macclesfield's and other trials—but I never heard of a judge yet who signed, sealed and delivered his bond, that he would absolutely decide so and so. I never heard of another judge who positively promised to make such or such a decision. Men like to wear, even with their accomplices, a decent disguise. They shrink from the odor of such promises, offensive even in their own nostrils. Such promises are given tacitly, silently. They belong to the class of presumptive assumpsits. They are implied, not expressed. See an example for all men, of the delicacy of corruption in Lord Bacon's trial; see with what dainty delicacy Bacon suffered a bribe. "My lady Wharton took a hundred pound. Then she goes to York House and delivered it to my Lord Chancellor. She carried it in a purse. My Lord asked her 'what she had in her hand?' She replied, 'a purse of my own making,' and presented it to him, who took it and said, 'what Lord could refuse a purse of so fair a lady's working?'" He protested that he did not know what was in the purse; but, said he, "Madam, I can refuse nothing at the hands of so fair a lady." He too loved the ladies. But he made no promise—oh no. Nor did this defendant make an express promise to Greves. *Promises* are never made in such cases. *Hints* are given, and hints are as good. When a man is told by a judge to take proceedings in his own court, does the man think that the judge is so advising him, for the purpose of thwarting his wishes, of denying the expected decision? Does a judge advise specific proceedings for specific redress, for the purpose of refusing that redress? Is that the object of judicial advice to entrap the person advised and to make him an enemy? No, sir; that is not the philosophy of judicial advice. Such advice seldom misleads. He advised Greves, and that is a direct, positive, corrupt violation of the statute. And if the gentleman is curious to see a corrupt motive proved, there it is sticking plainly out, the art of his client could not keep it in. It was to promote his own personal interest, his own personal advantage, by giving that advice. He sought to give publicity and solemnity to Greves' charges against Finch. Confined to Greves' careless, accidental, perhaps blundering accounts, those charges were of little consequence in the election. Reduced to form on paper, put upon the records of the Court in the sworn solemnity of a judicial paper, they acquired new and serious weight. They would thus tend to the defeat of Finch, and to the election of Hubbell. Greves, too, became identified with him, with intenser zeal, in the canvass. And he who doubts that the Judge would have repaid the service by the fulfilment of his hints, does injustice to the defendant's gratitude, and violence to the spirit of the whole body of evidence in this cause. The case never came to a hearing. But the advice is proved. The corrupt motive is here. It stands out apparent in unvarnished corruption.

Next, I shall take up the first Specification, the case of Mr. Mitchell. We find the Attorney-General of the State of Wisconsin proceeding against the Mammoth corporation of the North-West, one of the greatest corporations in the United States; aye, sir, I do not know but the very greatest; which with its insurance charter, and its capital of half a million, has overshadowed the North-West, the whole valley of the Upper Mississippi and the Lakes, and

has financially ruled and controlled it for years, in defiance of all authority, a monster bank. No mere wild-cat, sir; that term would be an injustice to its founders. With all the unchartered license of the wild-cat, it has a power of stride, a reach and vigor of spring, a ponderous development of size, beyond a forest of wild-cats. Masterly management, and in all, save its legal relations to the State—masterly integrity, have made the Wisconsin Marine & Fire Insurance Company grow up out of its charter as an Insurance Company, to be to the North-Western States what the Bank of the United States was to the Union. A fearful financial and political power—outside of the law and stronger than the law. Legislatures have assailed it—Attorney Generals have been invoked against it. But there it had stood in solid and magnificent outlawry, a monument of the power of money over the law. They say here, on the other side, that it was of tremendous benefit to the country. Mr. President, it had become in a measure, a tremendously necessary evil. It is like many things in our social system, a monstrous wrong, so embodied in the system as to be a self-created and monstrous necessity. The failure of this Institution would be a terrible calamity. It had so foisted itself into the currency of the country, that its solvency was a large measure of the public prosperity. So far I concede its benefit to the country. But be that as it may, there it had abided, overshadowing and overriding the law. At last it was proceeded against. A bill in the nature of an Information by the Attorney General was framed under the statute of this State, giving to our Courts of Chancery jurisdiction, equivalent to proceeding by *quo warranto* at law, against corporations in certain cases. This bill called the Insurance Company to account for having exercised the banking power of issue, contrary to their charter; and sought to oust the charter, and, pending the suit, to restrain the corporation from pursuing business as a bank. The bill was originally framed by the Attorney-General to be filed and proceeded on in the Milwaukee Circuit Court before Judge Hubbell, and was submitted by the Attorney-General to the Judge for the allowance of the Injunction prayed for. He refused to allow it, because notice of the application had not been given under our rules of court. Mr. President, I am not here to condemn what I believe to be right. I avow here that I have no doubt that the refusal to allow the injunction *ex parte* was right, was the duty of the Judge. Whatever motive may have governed him, the refusal itself was proper and just. But, Mr. President, his own conscience and the public appreciation of a just discharge of duty should have been his reward. Duty discharged because it is duty, is its own reward: and this defendant should not have gone to the secretary of that gigantic bank: he should not have gone to the potent dispenser of "Current Funds" to boast of what he had done. It betrays a motive outside of the fair and upright discharge of his judicial duty.

Failing in the circuit court of Milwaukee county, and so failing that he seems to have abandoned all hope of success in it—how and why, it does not appear—the Attorney General goes to the circuit court of Washington county. Judge Larrabee pursues precisely the same course as Judge Hubbell had done, but so does it that the Attorney General seems not to have been discouraged from proceeding in his court. He requires the Attorney General to give notice of the application for an injunction, and the Attorney General accordingly gives it. Notice is served on Mr. Mitchell. Mr. Mitchell goes to his counsel. He tells you,

what he told them then—that he believed the injunction would bring ruin upon the institution and ruin upon the public. I too believed so then and I believe so now. I believe the sudden stoppage of the Bank would have been a very great public calamity. Mitchell consults his counsel. What do his counsel say to him? They say to him this, and I say it to him now, over again. If a noisy and vulgar appeal is to be made here against the professional advice and course of counsel, let it come. But let me advise the gentleman making it, to be sure of his law.—If mountains are invoked to fall and bury us, let the mountains come; though when the gentleman was launching out that part of his terrific prophecy, I wondered where the mountains were coming from. I know of hardly a hill in this State, that I should care particularly for falling on me, or under which I should feel myself everlastingly buried. I said this to Mitchell; I say that *I* said it, but we all joined in saying it—Finch and Lynde, Brown and Ogden, Ryan and Lord. We told him that the Statute could not reach his Institution. We told him, and we produced the authorities to sustain our position, that the Statute giving the Court of Chancery jurisdiction to proceed by way of *quo warranto*, could not be held to reach an antecedently chartered corporation, by that means depriving it of its common law and chartered right of trial by jury. We told him that therefore the Circuit Court of Washington county, as a court of chancery, had no jurisdiction to entertain the proceeding. We told him further that under the Statutes of this State, the Circuit Court of Washington county had no jurisdiction over persons or corporations in this State but out of Washington county, and could not reach them by its mesne process, except in certain cases of which that was not one; and that it could not reach him or his bank in Milwaukee county. And when Mr. Mitchell told us that he was in fear that, if his Institution should be shut up even for a short time while we were getting an illegal injunction dissolved, great public and private loss would accrue; we told him that the injunction, if allowed, would be *coram non judice*, that he was not bound to obey it, and that to avoid the irreparable mischief he anticipated from obeying it, we advised him to disobey it. And I say now in the face of my friend here, and he as a lawyer will not venture to contradict me, that no man is bound by an injunction issued *coram non judice*, and that he would be weak to obey it to his own irreparable injury; and that Mitchell's true course, if an injunction had gone out against him, was to disregard it and treat it as a nullity. If that injunction had been issued from that Court it would have had just the force and power of a sheet of blank fools-cap paper. And the advice of Mitchell's counsel to him to disobey it, was as good morality, better law, better advice and more becomingly given within the line of duty, than the Judge's advice to obey it, given out of the line of duty; aye, in violation of duty. So much for the comparison the gentleman saw fit to draw.

The motion was heard by Judge Larrabee. Denying his jurisdiction, we declined to appear before him for the Corporation; but we offered as *amici curiæ*, to advise him, he courteously and properly permitted us, but finally overruled our objections to his jurisdiction. He, however, refused to allow the injunction on that application, upon a technical ground which we made to his power to act in Chambers. The Attorney General then noticed another motion for the injunction, for the approaching term of the Washington Circuit Court.

Judge Hubbell was going off to Madison to hold Court. He had been to

Alick Mitchell and told him that he had been applied to for the injunction, but had refused it. That itself was indecent in a judge. But he told Mitchell more. He said that great offers had been made to him to allow the injunction, but that he had refused them. That remark was wonderfully suggestive, was pregnant with inuendo. What did it mean? It said this to Mitchell; "Mr. Mitchell, you are the head of a very great and wealthy corporation. I have the power to shut up your bank. I was applied to, to do it, but I would not do it. I had great offers to do it; but I would not do it. I did bravely for you, but at great loss to myself. Your doors might now be closed, *you* stripped of all your wealth and power; *I* rich by the act. You still sit upon your financial throne, and I stand outside, the poor judge who has wasted life and fortune in the public service. This is my act, you the gainer by millions, I the loser by thousands. I might have done otherwise. Remember the poor judge, Mr. Mitchell!" Here was suggestion to a man wonderfully apt to take suggestion. It is true that Mitchell testifies—and we are bound to believe it here—that he never gave the judge a red cent for the service or the advice. Mitchell is a shrewd man. I suspect that if this be so, he played Mrs. Howe's game upon the defendant—kept his hopes skilfully in expectation until he had used him and then whistled him off. That may be a credit to Mitchell, but hardly to the defendant.

It seems that as soon as Judge Larrabee had claimed jurisdiction, Mitchell felt a certain fear that the injunction would come as a matter of course. That was natural for Mitchell. He must have known—none better—how weak his institution would prove, once fairly written the grapple of the law. But it seems that Judge Hubbell, too, had a want of confidence in his brother Larrabee. How or whence came that? Why should the Judge look with fear upon the probable course of his judicial brother? So far Judge Larrabee's course had tallied with his own. He had refused to act without notice, Larrabee had done the same both were right. Why then his distrust of Larrabee? Remember, that under the judicial system then, both were judges of the Supreme Court, where every order made in that cause might come up on appeal. Why the indecent spectacle of one of the judges of that Court, privately debating with a suitor in the Court of another of the judges, upon the probable judicial course of thatother? Aye, speaking with implied distrust of the action of the Court, with implied sympathy to the suitor who feared its action? Oh! what an edifying spectacle it would have been—had that cause gone up to the Supreme Court on appeal from an order allowing the injunction—to have seen Mitchell's personal and judicial friend after all this private cogging behind the scenes, step forth as the curtain rose, to take his seat beside his brother Larrabee, in solemn show of judicial impartiality, to pass upon that order, to hear and decide the case, as he told Mitchell, according to the law! Ah! Mitchell knew well what that meant. His keen intelligence must have giggled within him, at the ridicule of that grave affectation of duty.

Well, the Judge is going to Madison, and Mitchell comes to him again to consult with him, as he would have advised with any other chamber counsel, upon the advice given to him by his active counsel, passing private judgment upon the course recommended to him by his legitimate counsel, with his illegitimate counsel. And Mitchell having told him what advice he had received, his judicial counsel passes upon it and repels it. He tells Mitchell that he agrees with the other counsel, that Judge Larrabee has no jurisdiction to entertain the

case or issue the injunction. But he tells Mitchell, too, that he must not disobey the injunction, that he must obey it until it shall be dissolved, and come to him, the judicial counsel, to dissolve it. But Mitchell knows that the judge is going away, and no slow and easy process of dissolution will answer his purpose. So he says to the judge in effect, "That would all be very satisfactory, Judge, while you are on the spot; but you are going away to Madison to hold Court. Now, if an injunction should issue while you are gone, and I should follow your advice instead of the advice of my other counsel, where shall I be, Judge, in the mean while?" But resolute to be the keeper of his fortunes, the Judge has a ready suggestion. "My absence will make no difference, Mr. Mitchell. Telegraph to me and I will come back. The law of the land and my sworn duty oblige me to be elsewhere holding Courts in my own circuit, instead of being here plotting against the judicial process of another circuit. But give yourself no uneasiness, telegraph to me, Mr. Mitchell, and I will come to you by night and by day. My eyes will know no sleep, my stomach will know no refreshment, my body will know no pleasure, till I see you. By night and by day will I come to your rescue." Wonderful are the ways of self sacrificing zeal!

And the learned gentleman, wincing under these facts, contents himself with the feeble consolation that there was no express promise to Mitchell in that interview, to dissolve the injunction. Simple Mr. Mitchell; he must have all the simplicity of the dove, without a taint of the cunning of the serpent, not to have appreciated the suggestions of that conversation. What does he tell you here upon the stand? He says that he had no doubt the Judge's assurance implied a promise; and he did not know but the promise was given in express terms; at all events there was a promise understood. A judge upon the bench, hurrying from his place of duty, hurrying by night and by day, hurrying to the rescue of his illegitimate client; illegitimate, because his client in violation of law. There is the proof—"Obey that injunction. I believe with your counsel that it will be void. I believe with them that it will be *coram non judice*. I know, as a lawyer, that it will have no obligatory force. I know that you need not obey it. But then you would owe nothing to me. That is essential to me, though not to you. Obey the process. Send me word of your trouble on the wings of lightning, and I will come to you on the wings of the wind. 'Whistle and I'll come to you, my lad.' And mark me, Mr. Alexander Mitchell—trust to none but me; apply to none but me; do not stray after other helps. Owe all the obligations to me; owe nothing to your legitimate counsel, but all to me, your friend, your judge, your saviour!"

Suggestion, Mr. President; suggestion, palpably big with corruption! If, indeed, there was no express promise, what could express promise say more? This defendant knew, none better, that Mitchell's true course was to disregard the injunction. No doubt, as a practising lawyer, he would have so advised Mitchell. But as a judge upon the bench, that course would give him no hold on Mitchell. The Autocrat of Current Funds would owe nothing to him. And he gives to Mitchell the choice of offending him, with his power of judicial vengeance in his own or the Supreme Court, or of owing the salvation of the bank from ruin to him and to him alone. And think you, that when Mitchell heard that pregnant language, he did not know *who* used it? Think you when this defendant made it, he did not know to *whom* he used it? Did

not know that tens of thousands would be as nothing to that bank, to sustain itself in unimpaired strength and credit before the world? From such a man to such a man, every word was suggestive, suggestive then and suggestive now. Within the bounds of decent safety, suggestion could say no more.

Mr. President, if judges can thus step down from the bench, thus play the part of chamber counsel, thus tamper in secret with suitors in courts, say it at once, legalise corruption. Let it be no close franchise of secret combinations skilled to practice it. Let it be open, common right to all. If none are to have justice, let all have a fair chance of injustice. If judges are the ministers of private power, let all have an equal chance of getting their own tools upon the bench. If our system is incurably corrupt, let it be boldly corrupt. Let us throw all morality at once behind us. Away with the comedy played in our courts to mock the world, where retained counsel play the part of advocacy before the real counsel, by whose advice behind the scenes, the whole plot is cast. Let us send the cheat of employing counsel in our Courts, to the Devil—and go at once for our justice to the Devil. Proclaim it to the people of the State; proclaim it abroad. Let this Court, the Court of the last political resort, which settles the political morality of the State, say openly to all mankind, "this is the administration of law here sustained; this is the political morality of Wisconsin." If you will not convict, at least be open in the reason. Proclaim openly and boldly that within our borders judicial corruption reigns, corruption is the ordained judicial law. Let those who do not love corruption, have at least that warning to avoid our borders.

It occurs to me to say here, in relation to this and other specifications, that the case is nothing better or worse, whether the defendant's purpose was accomplished or not. It is of no moment, whether or not he got his reward. The proposition that he did not, has been set up here against some of these specifications. His guilt is perfect without reward. What whit of difference does it make whether or not Mrs. Howe jilted him? Or whether Mitchell duped his avarice, or rewarded his service with such shrewd indirectness that we cannot find the traces of it? Suppose that Mitchell keenly played upon his want of money until the danger had passed, and then told him, as he tells other people who apply more legitimately to him, that "the times are very hard; he must curtail his circulation; he would be very glad, but just now he really can't do it." I have seen very hard times, and I have seen times that every body admitted to be good; but I never saw the day that Mitchell could not say in his dry, decisive way, to an unwelcome customer, that the times were hard, and money very scarce with him, poor man!

We come to another divorce case, Craft and Craft. It is singular that there seems to be something sexual in this Impeachment. I never thought of it till the whole string of charges was in print, and then it occured to me. Where does it come from? Does it come from that Assembly? From the Investigating Committee of last winter? From those Managers? Hardly. Where does it come from then? It seems to me to come from the inherent character of the defendant. You cannot deal with him, without dealing in sex.

Mr. Craft was troubled with an unruly wife and wanted to be rid of her. He went to Judge Stow, in whose circuit they appear to have been living, and applied for a divorce. That Judge saw or thought he saw collusion and he would grant no divorce.—He had no more respect than the law, for the natural relief

of collusive divorce. Poor Craft thought it was for him as for others—divorce or California. Failing his divorce, he packed up bag and baggage for California. But he had an influential friend, a man whom we all know,—revered and potent in his own country—a man of no mean influence in the State—King in Mequanago and Grand Seignior of the 'Thousand and One.' Senators and others here may laugh. But I tell them that whoever thinks Andrew E. Ellmore—who perhaps does not himself always assume to be all that he really is—an insignificant personage, a mere talker, a man who does not understand the Odic force of Wisconsin politics well, is deceived. Ellmore is a really influential man; through all his somewhat noisy, and not always unaffected vaporing and gasconade, a really able man. Ellmore was Craft's friend; had Craft's property in his hands and name. Ellmore told Judge Hubbell that Craft was going to California. Always interested, never passive, the Judge asked why? Ellmore told him over Craft's matrimonial troubles; told how he had applied to Judge Stow for a divorce and how the Judge suspected collusion and would not grant it. Still restless, still inquisitive, the defendant inquires what grounds Craft had for a divorce. Ellmore went on and told him such and such grounds. Always meddlesome, always suggestive, the defendant comforted Ellmore for his friend Craft. "Oh! Mr. Ellmore, that is ample grounds for a divorce. Let Mr. Craft file a petition before *me* and employ my friend, 'personal and *judicial*,' Mr. Arnold; let him come to *me* and he will have probably no difficulty in getting a divorce." Ellmore took the hint. He has little faith in the legal profession; but, like others, he has faith in the potency of judicial advice. The abandoned hope of divorce is renewed; the counsel indicated is employed: the petition suggested is filed; evidence is taken; the whole is brought before the Judge who prompted it behind the curtain; and the play ends, contrary to the dramatic rule, in a divorce instead of a marriage.

But that is not all; the plot of the judicial comedy does not come to an end so summarily. Ellmore goes to get the promised proofs—to Appleton, I believe. His principal witness he finds gone. He gets such evidence as he can; and the story not coming up to the promised mark, he does not know whether the divorce will be granted upon such testimony as he has or not. He goes to the clerk, and wants him to open the depositions. The clerk declines, but tells him to go to the judge. Ellmore takes the sealed testimony to the Judge. Let me say here, that the power to open depositions is given to the court or the clerk, and not to the judge in vacation. It has been assumed here that the judge had a right to open these depositions; that he was the court. I deny, in the face of God and man, that Levi Hubbell off the bench, is the court. I deny that Levi Hubbell wandering through the world, whether in Ladies'. bedchambers or in bankers' closets, is the court. God forbid!

Well, Ellmore takes the depositions to Judge Hubbell, and wants to know whether there is proof enough in them. He knew, and the Judge knew, that there would be no opposition on the part of Craft's wife. Therefore the decision upon the sufficiency of those proofs, in that private interview, was the real decision of the cause. That was the real hearing of the cause. Ellmore asks him in effect, whether there is excuse enough there for the divorce. The Judge submits the question to a lady. I forbear. I will not comment upon that submission. That lady's name came into this testimony by the defendant's own act and deed. That lady has come here into this Court, bodily and figuratively,

by no acts of ours. I will reverence her name with more respect than her husband or her husband's counsel. I will not name it.

The Judge tells Ellmore that the testimony is all-sufficient if there should be no opposition; thus passing in private, under his own roof, amidst his own family, in his own room, on a case about to come before him in court: adjudging those proofs to be sufficient, with a qualification which virtually admits their insufficiency. The gentleman says that there was no impropriety, because there was no opposition, and because his client only gave his opinion upon the sufficiency of the proofs if unopposed. But suppose, Mr. President, that Mrs. Craft had come to the Circuit Court of Waukesha county with her defence. Suppose she had able counsel to conduct her defence. Suppose she had employed my learned and venerable friend whom I see sitting before me, or my other learned friend sitting yonder. They are surpassed by none in ability; and suppose they had gone with a unanimous voice for Mrs. Craft, before that court, and had brought all the authorities of all the books to demonstrate that those proofs were not sufficient. Where then would have been the impartiality of the Judge? What, then, would have turned the loaded balance of the scales of justice against all their learning, against all their eloquence, against all the right? That private decision. That private hearing here proved, an example of the infernal, damnable habit, which is felt in almost all cases, in all the courts of our Circuit, perverting the soul of justice.

The divorce is granted. There is, I believe, hardly a particle of evidence in the case, although I confess I was too much disgusted to read it with much patience. Well, the divorce is through with. The play is played out. The counsel who played a subordinate part is paid off; half pay, Ellmore tells us. What next? The manager looks round him for his reward. He accosts the Grand Signor pretty frankly. "Mr. Ellmore, have you heard from Craft lately? When you write to him again, tell him to send my wife a gold ring." They try to cry down that begging corruption, to an empty jest. A grave and vicious jest, Mr. President. California rings are no trifles. They figure up to five hundred, a thousand dollars, and I believe sometimes far more. Quite a little compliment may be disguised in a Calafornia ring—quite as pretty a thing, as the nice little purse which Lord Bacon could not refuse from a lady's hands, though he did not know what was in it. I wonder if Lord Bacon, in his admiration of the prettiness of the purse, and of the hand which presented it, had leisure to feel its golden weight? As he received, our Judge suggested, an unknown value. A California ring: quite a nice little present, hopefully indefinite. A perfect cap to the climax of Craft & Craft.

And is that the administration of justice which you are to sanction by an acquittal here? Is this woman deprived in this way of her marital rights, I do not care whether with or without her assent—if with her assent, illegally and horribly; if without her assent, wrongfully and damnably—is this woman thus deprived of her marital rights—no such sufferer as they ask for here? And is such secret juggle going on behind the curtain, to control justice? Are the scales of justice held aloft in the sight of our people, to be turned thus by an unseen current of mesmeric power, which no law, no justice, no right can guard against? Away with it all! There is one aspect, and but one to this whole cause. The question is not so much: is this man at your bar corrupt or incorrupt? It is: is this Court to try him corrupt or incorrupt? Is this people

corrupt or incorrupt? Will this people or this Court abide such proofs of corruption?

In opening this cause, when I spoke of the fifth Article, to which I now come, I had occasion to speak particularly of a charge similar in form and identical in principle, in the case of Lord Macclesfield. He was charged with borrowing the monies deposited in his Court. We do not charge the borrowing of them, so much as the taking of them of his own mere will, by the defendant here. I will very briefly advert to the law governing this Article, and very briefly to the facts proved under it. The attachment act contains this provision:

"Upon such order for a sale being made, the officer having such property, shall advertise and sell the same, in the same manner that personal property is required to be advertised and sold on execution, and shall deposite the proceeds thereof with the clerk to whose office the attachment is required to be returned."

So that you have a positive enactment if a positive enactment were needed, that the proceeds of the property sold shall be deposited with the clerk. We have here two cases. We have the case of the attachment at the suit of McBride against Comstock. The gentleman says of this case, that it was by consent and for the accommodation of the parties, that the money was taken. It was no such thing. It was by the consent of neither one party nor the other. It was upon the mere will of the Judge. He said he was the Court and he could take the money. It appears he was going east about that time; but he claimed to be the Court every where. It reminds me of a story told by a Minnesota Judge, who told the boy waiting at the dinner table, to hand the salt to the Court. Is he the Court and his pocket the vault of the Court? He is not the Court off the Bench. It would be an amusing subject of conjecture, for any one who has the leisure, or the disposition to follow up the intimation to imagine him the Court off the Bench, and to imagine all the queer things done in Court. But there was no assent given in this case. Mr. McArthur wanted to get the money into Court. The Judge tells him, 'I am the Court; I will take the money.' Mr. McArthur, who could not afford to offend him, submits; 'yes, I only wanted it in Court if your breeches pocket is the treasury of the Court—why, in Heaven's name, put it there.' But suppose that extorted submission was an assent. What then? What authority had McArthur to consent? Whose property was that money? It was the Comstocks. Up to judgment, it was the Comstocks. The Sheriff acquired a lien on it, but it was the Comstocks' property. McArthur had no power to consent for them. And it was a pretty thing to get the attaching creditor, who might never get judgment, might never acquire an interest in the money, to give his consent; and by the virtual loan of so much money, to acquire an inducement to protract the cause, and in the end to render judgment in the cause, for so accommodating a plaintiff. The Judge was going east and wanted the money, I suppose—as others going east want money—to spend it. Well, McArthur seems to have been obliged to take him at his word, that he was the Court and his wallet was the safe of the Court; there the money went. The Judge went east and the money went. It would be but natural gratitude, some six months after or so, when McArthur's client might want to go east in turn, to give him judgment on the attachment, like a Judge, and repay the loan, like a man. It is all a dangerous tampering with money. It is all indecent, consent or no consent.

In the next specification, the case of Vilas vs. Lansing, the money was de-

posited in court. The clerk had it. Some question occurred as to the payment of interest on the note, while the money remained in court. Judge Hubbell asked the clerk "Do you pay interest on money deposited in court?" "No, Sir: I do no such thing," replied Mr. Burdick. Burdick knew his duty better than the Judge; he knew that he was bound to keep that money and to have it in his safe, at any moment it was called for. He knew he was indictable, if he used that money for a day or even for an hour. Aye, Sir: if in sympathy or charity, he had taken that money and given it away or lost it, he would be indictable.—But not so the Judge. He was not the legal depository of the money; he was not thus accountable, if he never paid it. He was willing, generous man, to take it and to use it. He said to Burdick, "I will pay interest on it and I will take it." He did take it; and the gentleman laughed at the entry pencilled by the clerk in the book—"Judge has money." I rather think the Judge has money, many other sums in very much the same way. Judge Hubbell, argues his counsel, speeded the cause after he had the money, against his interest in keeping the money. A fair admission of the danger of the practice. But I do not understand the facts so. Judge Hubbell told the defendant's counsel in that case, that there was nothing in the Bill, no case made for the complainant; and yet the demurrer hung there some two terms, regular and special. Why so? Because the Judge of the court could defer the pament of his debt, by deferring the judgment of the court. Well, the time comes at last to pay the money. One of the gentlemen says that the Judge had it on hand all the time, ready to pay it any moment Why then did he volunteer to pay interest, if he did not mean to use the money? But what is the fact? What did he tell Collins, when he gave a check on his banker to pay it?—"If you do not want to remit, I would rather that you would not send that check for three or four days. I suppose Mitchell would pay it; but I don't want it presented, if my account is overdrawn."

It is claimed here for him, that the Judge's conduct was very praiseworthy and disinterested. The note was drawing interest; the amount was paid into court, to abide the dispute between the parties. The clerk would not pay interest. Collins required interest for his client and was right. Mr. Vilas who paid the money into court, was naturally and *Yankeely* desirous not to pay it. Mr. Vilas seems to be a witness in great favor with the defence here; I do not know, but I venture to guess, rich as he is, that his conscience is quite as near to his breeches pocket as poor old Wyman's, whom the counsel has so berated for his disposition to save money in his poverty.—Well, Collins wanted interest paid; Burdick would not pay it; Vilas did not want to pay it. What was to be done? This poor, benevolent and disinterested Judge was terribly anxious for them all. He was dreadfully troubled how to settle it amongst them. Finally inspired by the vacuum in his inexpressibles, he solves the difficulty. He says, "Gentlemen, I am above all these things. I will sacrifice myself to you. Give me the money and I will pay the interest."—The Judge assumed the responsibility. He put himself out of his way to accommodate these parties, to save Collins his interest and to save the scruples of Mr. Vilas about paying it. But when he comes to pay back the money, the interest escapes utterly from our Judge's brain. It takes a jog to remind him of the principal, but the interest totally escapes his memory; and finally he don't think he promised to pay it at all. If he paid at all, he would pay no more than seven per cent. The note

was for twelve per cent; he would pay but seven, and he must really call upon his friend Judge Vilas for the other five per cent. That is the proof. It is all a shameless pretence to disguise the vicious itching of his palm for all the moneys about his courts.

The Court here adjourned to 3 o'clock P. M.

AFTERNOON SESSION.

Mr. Ryan resumed his argument.

Mr. President, at the adjournment of the Court this noon, I had proceeded as far in the order which I have marked out, as Article 4. I will now proceed with the four remaining Articles and if my strength should not absolutely fail me, I hope to dispose of them within the present session of the Court.

Mr. President, Article four charges several violations of a positive Statute Some question has been raised here upon the construction of the Statute. I read, in my opening, section eleven of the Statute under which Judge Hubbell was elected and which took effect some time in 1848. The other side refer to a Statute which took effect with the general Revised Statutes in January 1850; and argue that the provision of the latter Statute is different from the section which I quoted, and operates as a repeal of it. In regard to that, I have to say first that at the time of the case of Hart and Hart, one of the specifications, the Statute they rely on was not in force at all. The section which I quoted was the only provision then in force on the subject. I believe all the other specifications occurred after the second Statute came in force. I apprehend that the provision of the Revised Statutes which they quote, nowise operates as a repeal of the 11th section of the Judiciary Act of 1848. Without a plain and manifest signification of the intention of the Legislature, the former cannot work a repeal of the latter. There is no inconsistency between the two. It is a part of the history of the country, of the political history of our State, that those Revised Statutes were gotten up in a very great hurry, and that the term *Revised Statutes* is in a great measure a misnomer. There are in those Statutes many double provisions, some contradictory provisions and many evident marks of haste and oversight. Without pausing now to point them out in detail, I say to the Members of this Court, that if they will take the pains to look through the act of 1848, providing for the election of judges, they will find in it many provisions essential to our judicial system and not enacted elsewhere; and, for that reason, I assume, when the Revised Statutes were published, that Act was printed with them, not as a part of the Revision but as a supplement to it; as an Act without which our Statutes, as a Code, would be utterly defective. The eleventh section of the Act of 1848, requires a consent in writing;—the twentieth Section of the Act of 1849, which took effect in January 1850, provides for a consent, but does not provide whether or not that consent shall be in writing. The sections are substantially alike in their provisions, with that exception. Now, Mr. President, as there is no repeal in terms, the other side can only claim a constructive repeal. The rule of law, Sir, on that subject is well settled. It is this. The law does not favor constructive repeals; and unless the provisions of the subsequent act are irreconcilably incon-

sistent with the provisions of the prior act, a repeal will not be inferred. Here then is no inconsistency between the two provisions; both require a consent; the later provision stops there, the prior goes on to require the consent to be written. Both have effect together, and require a consent in writing. But that is not all. If the Statute they rely on contained the only provision on the subject, I apprehend it would amount in practice to the same thing. Our rules of Courts cited here and properly cited by the gentleman on the other side, judiciously require all consents, even between counsel, to be in writing. Gentlemen practising at the bar, cannot consent so as to bind themselves or their clients in the simplest matters of practice—to extend the time of a rule, to waive a default, to postpone a trial, to vary any other common course of practice, without consent in writing. Verbal consents will not bind them. And is it to be supposed that the legislative wisdom of this State designed to found a jurisdiction, to give to a court jurisdiction prohibited without consent, by a great moral rule of law, decided to be back of and superior to our statutes, and even our constitution; a rule prohibiting Judges from sitting when they have any bias or interest, personal, professional, or by kindred; can it be supposed, I ask, that the legislature intended to found such a jurisdiction upon consent less solemnly attested, than consents in the pettiest matters of practice? But again, both parties must consent. The consent of one party cannot confer the jurisdiction. The argument here has been that you might *infer* a consent; and not only infer it, but infer it from *one* of the parties only: infer a consent not made in writing, not made verbally, not made expressly at all, but inferentially drawn from the acts of the party to found a jurisdiction against the moral rule and against the positive provision of law. First, you are to infer a repeal of the statute requiring a consent in writing; and secondly, to infer a consent never actually given. This very argument goes to show the mischief of inferring a repeal of the wholesome provision, that the consent should be written; that it should be a writing and become a part of the records of the court. And I urge it, to show that it could not have been the purpose of legislative wisdom to destroy that wholesome provision; and to leave the foundation of jurisdiction to a verbal consent, resting in mere personal memory, liable to be forgotten the next hour, not entering upon the record, and to be inferred, years after, from the silence of counsel on one side.

Another question has been made upon this statute. It is said that the prohibition of sitting as a judge, extends only to the particular cause; not to the subject matter of the cause, not to the parties as connected with the subject matter, but only to the identical cause in which the Judge was of counsel; and that if the same subject matter come before the Court, between different parties, or between the same parties in a new suit, then the judge is qualified to sit. I read you the rule from Oakley and Aspinwall, at the beginning of this trial. I read it there as settled by the Court of Appeals in New York, as a high rule of legal morals, antecedent to all written law, superior to all written law, standing back of the constitution itself, and controlling constitutional enactments. The constitution of that state providing for the sitting of eight judges in that court, was urged in that case as imposing a duty on the judges to sit; but the court, illustriously true to a great principle of judicial morality, held that behind the constitution was the just rule of morals, that no judge should sit in any cause where he was innterested by any of the relations by which dis-

qualifying interest attaches; and that this rule was an exception implied in every grant of judicial power. I have not the book here now. And I have no language of my own to replace the tone of dignified integrity, with which that decision presented the high impartiality, the pure and perfect indifference, the intact judicial chastity of mind, which the law requires of him who sits in judgment on the bench. And am I to be told here in Wisconsin, where this high rule of morals has been incorporated in a positive statutory provision, that if A. sues B., and employs counsel, and this counsel subsequently goes upon the bench, the judge indeed cannot sit in judgment in that suit; but that all A. has to do to have judgment from his own retained counsel, is to discontinue his suit and commence a new one, and then his counsel can sit in judgment on the same matter? Or, that if a suit is commenced, say against the maker of a promissory note by the second endorsee, and counsel is employed to defend that suit; when that counsel goes upon the Bench, he cannot decide upon the defence in that identical suit; but if a new suit is commenced on the same note, say by the first endorsee against the same defendant, that then the retained judge may sit, and decide upon the defence? Is that solemn, high and noble rule of morals, engrafted into our law, to be thus quibbled away? Thus to be cut down, mutilated and crippled? Thus to be assassinated, by creeping verbal criticism? Whence comes this rule? What is the reason of this rule? Why apply it to any case? Why should not a lawyer, when he leaves the Bar for the Bench, when he is to administer and not to practice the law, forget his retainers? Why not abandon his interest in his client's cause, with the cause itself? Why not divest his mind of all bias arising from his professional relations, when the professional relations themselves have ceased? Why should public policy thus guard against the survival of this vicarious interest? The reason is founded in truth and a proud truth for our profession. It is common to find men false to almost every relation in life. It is common to find lawyers who are unfaithful to unprofessional relations. They may, outside of their profession, betray the dearest trusts and break the dearest obligations. But how rare, how beautifully, gloriously, proudly rare, is the instance of a lawyer false to his client! No, Mr. President, your true lawyer enters into his client's interests, with as great zeal, aye, often with greater zeal than the client himself. Assuming his client's cause as if it were his own, he enters more deeply into it, he studies its questions and its chances more, he comes to comprehend it far better, and often feels it with intenser interest. It is in him a delegated interest, to be sure, but professional zeal combines with professional pride of opinion, until he forgets it as a delegated, and feels it in him as a personal interest. Nor does it end with his retainer. A true lawyer assumes the controversy in his mind, and his interest abides while the controversy lasts. And the law, recognizing this honorable and useful bias of the professional mind, says that the man thus enlisted in his client's cause, shall not, if an honorable man, be asked—shall not if a dishonorable one be suffered to sit in judgment upon the controversy with which he has thus identified himself. Justice is represented blindfold. Justice should sit upon the Bench blinded, knowing no friend, knowing no enemy, knowing no bias, knowing no prejudice, knowing nothing of the cause but the proofs, knowing nothing to control the cause but the law, and knowing the law with faculties unclouded by prepossession, unwarped by prejudice. And it would be idle; worse than idle, it would be shutting our eyes to all experience

of human nature, to expect a lawyer, thus bigotted to his client and his client's cause, to go upon the Bench and sit impartially between that client and his adversary; to sit impartially on their controversy between any parties. He has listened to his client, believed his story, adopted his views, felt his grievances, become a second party to the controversy,—his whole soul in it. I have seen, every lawyer has seen, the world has witnessed, many and many a case where the client in all his selfishness knew that he was in the wrong, but the lawyer in his professional zeal had wrought himself into a conviction that he was in the right; where judgment might be entrusted to the integrity of the client, but could not be trusted to the professional bias of the lawyer. And the law refuses to trust judgment to him.

This is the policy of the Statute. What is the language of the Statute? I will read the Section they rely on. The provisions are identical with the exception already considered.

"In case the Judge of the Circuit Court shall be interested in any cause or causes pending in such Court, or shall have acted as attorney, solicitor or counsel for either of the parties thereto, the said judge shall not have power to hear and determine such cause or causes, except by consent of the parties thereto; and upon motion, the said judge shall order a change of venue to an adjoining circuit, and the judge of said circuit shall hear and determine such cause or causes." They contend for a literal construction, and say that here is a literal exception of the identical cause only. Statutes are not to be crippled by a narrow, literal, verbal, grammatical construction. They are to be liberally construed, with a view to their purpose and policy. But let us see where their literal construction would leave them. It would prohibit a judge, not only from sitting in any cause growing out of the controversy in which he had been retained, and in which his client is a party, but also from sitting in any cause in which his old clients are parties, whether he was or was not ever retained on the subject of the suit. This is the literal construction of the phrase, "or shall have acted as attorney, &c., for either of the parties thereto." They ask here for literal construction and that is literal construction. It does not help their case, but extends the Statute beyond the construction we give to it. And having invoked literal construction, they can only escape from it by appealing to the policy of the Statute. That brings them to our construction. I do not ask this Court to give it, I know that the Court will not give it a mere, narrow, verbal construction. But this Court will give to the Statute the construction which the Assembly have given to it, which their Managers insist upon, and which I have here contended for—a liberal construction, founded on the intention of the framers, and the policy of the provision—a construction which prohibits the judge from sitting in any cause where he had been of counsel for either of the parties, on the subject matter of the suit, or where his has acted as counsel on the subject matter of the suit. There is no other rational construction to be given to it. And the policy of the Legislature, the principle on which the law is framed, force us to that construction, not repelled by the language of the Statute, but arising directly from a lawyer-like view of it.

I will consider together Specifications 1, 5 and 6, all kindred matter. In 1846, in March, I believe, George Cogswell made sale of a stock of goods in Milwaukee, to Charles I. Kane. They had been together before, and they remained together after the sale. Cogswell came to Milwaukee and did business

in his own name, up to this sale. Up to that time, Kane had acted ostensibly as Cogswell's clerk. Kane then became the ostensible merchant and owner of the goods, and Cogswell ostensibly the clerk of Kane. I am not going to fight the battles of Cogswell and Kane, in this Court. I take up here no immaterial, no collateral issue. Neither of them is my client here, and for the purposes of this argument, I do not care whether Cogswell and Kane had been partners before, or remained partners after that sale. I do not care whether that sale was a fraud or not. This much I will say, as an act of sheer justice to one of the witnesses who has been greatly assailed here. I ask the attention of this Court to the record of Parsons & Lawrence against Kane and Cogswell. Throughout the whole of that cause, which was instituted to have the sale of Cogswell to Kane set aside as fraudulent, George Cogswell never took an oath to the validity of that sale; never once swore to the *bona fides* of that sale. It is true, that for three years he professed to the public that it was a true and valid sale. But if George Cogswell, for his own purposes, was willing to lie, as the counsel reiterates so often, his conscience never stooped to perjury. When he was peremptorily ordered to answer the exceptions or to be subjected to attachment; when he was taken before the Master, and gave those twelve extraordinary answers, containing such infinitesimal information—those homœopathic responses—the counsel for the complainant could not draw from him any answer affirming or denying the *bona fides* of the sale, could not draw from him an answer contrary to what he says now his conscience told him to be right. And when it came to the crisis, which gave him a choice of three things, a disclosure of what he considered a fraud, a perjury to conceal it, or an attachment to punish him for not answering, George Cogswell took 'discretion to be the better part of valor,' and took himself out of the reach and jurisdiction of Judge Miller. The penal powers of the Court were brought to bear upon him, his stubborn demurrers could not serve him further, he would not confess and he could not deny, and he fairly fled to the pit. He took refuge, like many another sinner, in Michigan. Here is evidence of consistency. Here is a mark of his present truth. You nowhere find, throughout all this litigation, with so many temptations to him to take it, an oath contradicting his present story. I say this in simple justice to the man. I do not care, for this case, whether Kane's story or Cogswell's story be the truth.

I say another thing, as another act of justice. During some three years, I believe, of litigation of which I was cognizant, growing out of this controversy, no evidence was ever produced, tending, in my mind, to establish a partnership between Kane and Cogswell, or any fraud or perjury on the part of Kane. I will not here assume a part in the controversy between these witnesses. I wish simply to do them both justice, in the peculiar position in which they relatively stand here.

Well, in March '46, I think, the sale was made. On the 16th of June, 1847, a creditor's bill was filed by Parsons & Lawrence, judgment creditors of Cogswell, impeaching that sale. I have more than once read in the hearing of this Court, that part of the bill which impeaches the sale. It sets up that no valuable consideration passed, and that the sale was a fraud upon the creditors of Cogswell. That suit was contested on the part of the defendants, Kane and Cogswell, with great interest and energy. It was fought after a peculiar and significant mode of warfare The defence avoided the main question. They

avoided a pitched battle, but skirmished with Arabic fierceness, amidst a cloud of dust. A sort of Guerilla warfare, such as I never saw in a chancery proceeding in my life before. Judge Chandler put in an answer for Cogswell, avoiding all the disputed statements of the bill; containing, I think, no statement of fact throughout, except an admission of the recovery of the judgment, and perhaps one or two other little facts of no material consequence, lost in an infinitude of bad law, ingeniously introduced, iterated and reiterated to cover the poverty of the answer in facts. Kane, charged by the bill with being a party to the fraud and to the sale, evaded that whole question, and answered simply that he had no assets of Cogswell in his hands. But the Guerilla war began even before that. Two several demurrers were put in. Here was a common creditor's bill filed under the Statute, setting forth the judgment, the return of an execution unsatisfied, setting up the fraudulent sale, and averring that all the defendants had assets of Cogswell's in their hands, out of the reach of execution, but which ought equitably to go towards paying the judgment. One might think that bill safe from a general demurrer. Not so thought the counsel who defended. He boldly demurred to the bill. No decisions bound his ardent zeal. He held that common bill, as well adjudicated in all its bearings, as the money counts in a declaration to be bad on demurrer. Guerilla warfare, Mr. President. As a curious reminiscence of the case, I take leave to look into these demurrers. Let me read the causes of demurrer assigned. I ask the attention of the legal members of the Court. Though I am well aware that no comments of mine can enlighten them, let me tell them that these demurrers will open their eyes. There are things here undreamt of in their philosophy. (Mr. Ryan here read from the first demurrer.) There they are: first, a general want of equity in the bill. But perhaps that is thrown in *pro forma*, as mere make-weight to specific objections. Well, what are the objections? That the bill is an information and belief; a novel ground of demurrer, "hitherto unsung in prose or verse." Guerilla, Mr. President. What next? That the jurat is imperfect; a demurrer to the jurat! Guerilla again, Mr. President. What else? That the bill is filed and sworn by an agent who does not produce his authority. A demurrer for want of a warrant of attorney! Guerilla always, Mr. President. I have a notion of what was called Guerilla warfare in Spain and Mexico. If I am able to understand what can be Guerilla practice of the law, this is Guerilla. The counsel who drew that demurrer should have a patent for the invention.

That demurrer is the demurrer of all the defendants in the suit. Who drew it? It is in the handwriting of Judge Hubbell; drawn and signed by him. Now, counsel are not to be held responsible, and I do not seek to hold the defendant here responsible, for the desperate circumstances of his clients. It may be that this course was judicious. It may be that his Guerilla attacks were the only mode of assault he could make, the only available defence. It may be that it was judicious to try to blind the eyes of my old Judge, Miller, with this very minute and invisible dust. It appears that Judge Miller was able to see the cause plainly, through it all. But I will say that counsel who is driven to draw such a demurrer, who is obliged to put on magnifying glasses to see defects invisible to the strong and naked eye of the law, who is obliged to escape from defence into quibbles in which he can feel no faith, must not only be considerably interested in the subject, but must be advised sufficiently of the

facts to know that they furnish no better defence. Such defences are pregnant with confession.

That demurrer was filed by this defendant in August, 1847. In December after an amended demurrer was filed. The grounds of demurrer seem to be identical in substance; after months of deliberation, the Judge amends the form, but relies with abiding faith on the matter of his patent demurrer. The amended demurrer is not in his handwriting, but is admitted to have been drawn by him, copied by his clerk and filed from his office. These demurrers, put in for all the defendants in the suit, Cogswell, Kane and the rest, and covering the whole defence of the cause for some six months after the bill was filed, are both signed by Levi Hubbell, Solicitor for the defendants.

We then come to Kane's answer. That is in the same handwriting as the second demurrer, and is proved and admitted to have been drawn by the defendant, and is signed by him in his own handwriting, as Solicitor for the defendants. It is also signed by Judge Chandler, as counsel for the defendants. It is the joint and several answer of Charles I. Kane, Alonzo Kane, Philander Kane and Samuel Church. It was filed on the 27th of December, 1847, upwards of six months after the bill.

Next we come to the queerest document in the cause; the answer of the defendant, Cogswell. It admits the recovery of the judgment, the return of the execution unsatisfied and states that at the time of the execution he had property in his hands on which the *fi. fa.* might have been levied; and then goes on to state what he is advised by his counsel, goes on through some five well written pages of admirably bad law, to excuse himself from answering the balance of the bill. This was drawn by Chandler under circumstances to which I will presently allude. Exceptions were of course taken to it, and of course sustained.

Cogswell, as I had occasion to say before, was brought before a Master of the Court and interrogated touching the sale, and his means of paying the judgment. Here is his examination which the counsel read to you. I will not read it again. His answer to the first question in substance was, "I won't answer, because I am advised I need not." His answer to the second question was, "My answer to the second question is contained in my answer to the first question." And so on through all the remaining questions to the 12th. It is in proof that he was then acting under this defendant's advice.

The cause remained in that status,—Cogswell having taken sanctuary in Detroit, from Judge Miller's attachment,—until Judge Hubbell went on the bench. Then it was sent by him to Walworth county, on the ground that he had been of counsel in it.

Cogswell swears to you positively that Kane and himself both employed Judge Hubbell as their counsel in that cause; that Kane and himself both consulted Judge Hubbell on the subject of that cause; that Judge Hubbell drew the answer for Kane, but that he would not let Hubbell draw his answer, because he was going to swear to no such answer as Kane's. When that cause was commenced, and while the initiatory steps were taken in the defence of it, my venerable friend, Judge Chandler, adorned the Bar in the State of New York. In that summer he made a visit of exploration, as he tells you, to the city of Milwaukee. He came, in his own phraseology, from the same 'vicinage' as Cogswell had come; and he readily consented, for the sake of old acquaintance, on Cogswell's

request, to act as volunteer counsel for him and for him only along with Hubbell, while he remained at Milwaukee. But from the commencement of that suit up to the fall of that year, when Judge Chandler removed to Milwaukee, the defendants in that suit, Kane, Cogswell and all, had no counsel in that suit, no legal representative in the court where that suit was in litigation, except Judge Hubbell.

When Judge Chandler came to reside in Milwaukee that fall, he tells you that he had no dealings with Mr. Kane; that he never represented Kane in that suit; that the relation of attorney and client never existed between him and Kane in that suit; that he had never any conversation or intercourse with Kane on the subject of the suit; that he had nothing whatever to do with Kane in that suit. Judge Chandler tells you that Cogswell came to him and asked him to draw his answer. He tells you more.—He tells you that Judge Hubbell came to him and asked him to draw Cogswell's answer. He says that Judge Hubbell told him that he, Hubbell, had already drawn Kane's answer, feared there was perjury in it, and did not choose to draw a second answer in the same case, containing perjury. It seems that there was a natural suspicion between Cogswell and his counsel. Cogswell seems to have suspected that Hubbell would lead him into perjury, and Hubbell feared that one client had plunged into perjury, and the other would plunge in after. But Chandler tells you, and the whole proof is, that neither before or after his advent to Milwaukee, did he or any other person, except Judge Hubbell, act as solicitor or counsel for Kane in that suit.

Well, Mr. Kane is brought upon the stand by the defence, and he tells you that he never retained Judge Hubbell in that suit; that he regarded it as peculiarly Cogswell's suit; that he considered he had nothing whatever to do but to answer one question; that he consulted his regular counsel, Tweedy & Crocker, and that they told him that he must simply answer the bill, and had no further interest in the case; that for the purpose of making Cogswell foot the bill, he had Cogswell, whose suit he regarded it, go to Judge Hubbell to draw his, Kane's, answer; that the answer was drawn on the responsibility of Cogswell; that Cogswell paid for it, and he never paid or received any bill for the service. When I came to cross-examine Kane, I read to him that part of the bill which impeached his title to property to the value of some $8500, and which, if it had prevailed, would have stripped him of that amount of property; and asked him if he considered that he had no interest in that suit? I do not remember precisely the language of his answer. I do remember that I asked the question just before the evening adjournment, and that the President's hammer came down between the question and the answer. Mr. Kane had a night's reflection on the question, and answered the next morning. His answer was substantially this—that he wished Cogswell to be at the whole expense of defending the suit; that he knew Judge Hubbell was able counsel; that he was willing to trust his interests to him; and that if Hubbell had refused or ceased to act, and Cogswell had retained no one else, in whom he, Kane, had confidence, he would have employed counsel for himself. He knew his interest was deeply at stake in that cause; he knew he had an interest of over $8000 in defending it; he watched to see it defended ably by able counsel; he knew that counsel were acting for him and in his name; he relied on that counsel's zeal and ability in his behalf; he stood ready to replace that counsel in case of the

failure or neglect of that counsel; he allowed that counsel to act for him upon the retainer of Cogswell in his behalf, merely, to subject Cogswell to the whole expense of defending the suit; his whole plan succeeded; the suit was defended for him by Hubbell, but Cogswell had to pay the bill. And Hubbell has never acted as Kane's counsel!

The idea seems to prevail on the other side here, that the payment of a fee, or at most the mere liability to pay a fee, is the only way in which the relation of attorney and client arises. And that in order to establish the relation of counsel and client, we must give proof of the payment of money, or at least of a liability to pay it. I deny that doctrine in toto. The relation of attorney and client arises between every man whose legal interests, whether in litigation or not, are put into the professional charge of a lawyer, and every lawyer who takes the professional charge of them. It is immaterial whether the service of the lawyer is to be paid for, or by whom it is to be paid for. It is immaterial who employs the lawyer, whether the client, his agent, his friend, or one having a common interest, if the client and lawyer both assent. It is immaterial whether the client is liable for the service, or some one else. It often happens in practice, that the lawyer never sees his client, after that he charges his service to another. One lawyer often employs another and pays him; but the relation of attorney and client attaches to both. The professional relation, not the pecuniary relation, is the test. Whatever man has his legal business transacted, his suit prosecuted or defended, by a lawyer—no matter how it came into the lawyer's hands—is that lawyer's client. Whatever lawyer has in his hands the transaction of another's legal business, the defence or prosecution of another's suit, no matter how he came to have it, is that other's attorney or counsel, as the case may be. Compensation, or the right to compensation, is not the test. In England, counsel have only an honorary fee; they have no legal claim to compensation. The relation arises from the professional trust, and not from the reward. And here I care nothing, whether Kane paid or was liable to pay the defendant. The defendant was Kane's solicitor and counsel. He was Kane's sole solicitor and counsel. The suit involved Kane's fortunes, was defended for him, as the record and the witnesses prove, and by no other human being except this defendant. And I say here, that this whole record confirms the statements of Chandler and Cogswell upon this point, and confirms our whole proof of Hubbell's professional relations to Kane. I will show you by and by, in the further relations of this case, evidence bringing the conviction right home to every human heart; but I choose to take the case in the order of time.

Years after, Judge Hubbell being upon the Bench, the bill of Howe against Kane & Cogswell, was filed by Chandler in the Circuit Court of Milwaukee county. That bill involves in part the same identical matter as the bill of Parsons & Lawrence. It has been read here. It impeaches that same identical sale of March 1846 of Cogswell to Kane, impeached before by the Parsons & Lawrence bill. It charges that Kane is the trustee and depository of Cogswell's property, liable for Cogswell's debts, precisely as did the Parsons & Lawrence bill. It has so far precisely the same identical subject matter. They attempt on the other side to draw this distinction; that the Howe bill sets up what the Parsons & Lawrence bill did not set up—a partnership between Cogswell and Kane, and asks a decree enforcing the liability against Kane, as a dormant partner of Cogswell in contracting the debts. The Howe bill was demurred to.

The demurrer was overruled by the Washington Circuit Court and came by appeal into the late Supreme Court. The decision of the case is very long and I shall not read it here. It is to be found in 2 Chandler's R. 222. The decision substantially is, that so much of the bill as relates to the liability of Kane as a partner is bad, but that the rest of the bill is good as a creditor's bill, to charge Kane in favor of the creditors of Cogswell for the proceeds of the sale of Cogswell to him. So that, though the bill was framed as something more, the Supreme Court held it to be no more and no less than a creditor's bill, with precisely the same scope as the bill of Parsons & Lawrence. It would have made no difference here, had the Supreme Court sustained the whole of the Howe bill. It would have answered all our purposes to show that it covered the subject matter of the suit of Parsons & Lawrence; it would not have affected our purposes, that it should have covered more ground than the Parsons & Lawrence bill.

It is in testimony before you, that upon the removal of the suit of Howe against Kane and Cogswell from the circuit court of Milwaukee county, Judge Hubbell assigned as a reason for not sitting in that case and for removing it to another circuit, that he had been counsel for the defendant, Kane, in a former suit, meaning the case of Parsons and Lawrence, involving the same matters. I do not recollect whether or not Chandler stated that the Judge then assigned his retainer for both of the defendants; he certainly did the retainer for Kane. The cause, Howe vs. Kane and Cogswell, was sent to the circuit court of Washington county and came into the Supreme Court, from time to time afterwards, upon several interlocutory appeals. It finally came up on an appeal involving the final disposition of the cause. Throughout all those appeals, Judge Hubbell declined to sit upon them and vacated the bench, until the last appeal. The records and the testimony show, that every one of those appeals was taken by Kane; that Cogswell never joined in one of those appeals; that the appeals were Kane's and Kane's alone; that they involved no rights of Cogswell. Indeed it is in proof here, that in that suit Cogswell's and Kane's interests were antagonistic, that it was a struggle between them; that the creditors of Cogswell, the complainants in that suit, acting upon his information of the fraud alleged to have been committed, were pursuing Kane for the payment of their judgments against Cogswell; that Cogswell made no defence to that suit, but that Kane alone defended against it. And, except one appeal of the complainant's which never came before the court, every appeal in that cause to the Supreme Court was the appeal of Kane only. Cogswell was never in the Supreme Court in that cause. Cogswell's rights were never before the Supreme Court in that cause. Those appeals were all questions between the complainants and Kane, involving Cogswell in no way. Cogswell was not a party to any one of them.—Throughout all these appeals, except the last one taken, as you will recollect is testified by Judge Whiton, Chandler and others, Judge Hubbell declined sitting, on the ground that he had been counsel for some of the defendants; though it does not appear that he said for which of them. He told Mr. Orton that he did not sit because he had been of counsel on the subject matter. Now I will show you that his statement, upon that last appeal, that he then sat in the case, because he had been counsel for Cogswell only and not for Kane, is contradicted not only by the Parsons and Lawrence record, but is virtually contradicted also by the record of Howe against Kane. I have here a statement of the

record in print, made in the case in the Supreme Court and admitted to be correct; and I ask the attention of the Court to the dates. On the 18th day of April, 1851, the Washington Circuit Court made an order dismissing the bill in that cause as to the defendant Kane. On the 21st day of the same month, the circuit court made an other order in the cause, vacating and setting aside the order of the 18th. On the 28th day of the same month, the circuit court made a final decree in the cause, as to the defendant Cosgwell; which decree, as the Supreme Court afterward virtually decided, disposed of the whole cause. All these orders were made within the same term; the regular April term 1851, of the Washington Circuit Court. Mark that last date, the 28th of April, 1851. On that day the final decree as to Cogswell was made and took effect. That was the disposition of the cause which the defendant here alleges, put Cogswell out of the cause. So that on the 28th day of April, 1851, Cogswell was as much out of the cause as he was ever after. Nothing was ever done to bring him into it again. His position has remained the same from that day to this.—Yet some two months afterwards, at the June term 1851 of the Supreme Court, Judge Hubbell still declined to sit on appeal taken by Kane from the order of the 21st day of April previous, on the same old ground that he had been of counsel for some of the defendants. *Then* the cause was in precisely the same status, the parties all of them were in the same relation to it, and the subject of the appeal was precisely the same, as afterwards in December 1851 and June 1852, when Judge Hubbell claimed to sit and did sit on the ground that he has been of counsel for Cogswell only and that Cogswell was out of the cause.

Judge HUBBELL. The final decree disposing of the case as to Cogswell, was not known to the Supreme Court at the June term '51.

Mr. RYAN. I cannot assume to say of my own memory, at this late day, that the record was before the Court formally at that time. I have sent for the record and we shall see. I can only say now that it was notoriously known to all in connection with the cause, and, if I am not wofully mistaken in my recollection, was discussed in fact before the Court. On the 28th of April, 1851, the final decree as to Cogswell, was made. At the June term, 1851, the case was here on Kane's appeal from the order of the previous April, restoring the cause as to him. The suit was then disposed of as to Cogswell, and at an end as to him, as much as it is now. On that appeal, Judge Whiton testifies that the defendant declined to sit, because he had been of counsel for the parties, or on the subject matter. Now, if Judge Hubbell had only been counsel for Cogswell, if that were a true assignment of his reason for sitting afterwards; if that were true in fact; if it were not disproved by the whole record; he had the same license to sit at the June term, 1851, as at the December term, 1851, or the June term, 1852; for the cause was in the same status. I have one more comment to make upon that and but one. The defendant says here that it did not appear in the June term, 1851, that the final decree as to Cogswell had been made. I sent for the record to see how it was, but I am not able to find the decree or to say when it was filed in the Supreme Court, but I said before that it was then a matter notorious with every body in that suit, and that I was very much mistaken if in the argument of the appeal in June, 1851, the whole subject of that decree was not commented upon. I cannot pretend to say when the decree was filed here, but here I find the printed brief used by the Court

and counsel on the argument of the appeal in June ..., and the point made in it for the defendant Kane, that the final decree made as to Cogswell, was a final disposition of the whole cause and on... Kane. I thought could not be mista...

Judge HUBBELL. The records ... show that the final decree was not brought before the Supreme Court until December, 1851.

Mr. RYAN. ...u must be mistaken. For I argued the effect of that decree to the Court in the room, in your presence, from this printed brief, in June, 1851. The decree must have been here. But whether the decree was here or not, certain it is the fact, that the decree had been made, was here notorious to all in the Court, and discussed at length in this very room.

Judge HUBBELL. Well, it is immaterial. If I was over delicate then, it is no matter.

Mr. RYAN. I am not arguing questions of delicacy. But as the word delicacy has been dropped, let us see a little how the delicacy appears. Involved as the two men, Cogswell and Kane, were, taking their two stories about their difficulties, whichever is true; by the one, Cogswell was cheating his creditors and trying to pay them by a cheat upon Kane; by the other, they had set their heads together to cheat their creditors, while Kane so managed as to cheat the creditors and Cogswell too; taking either of the stories for true, should not he who had been counsel for both of them—one of them, either of them, as you will—have been a little, a very little prompted by delicacy, not to sit in the cause at any time, or in any status?

Mr. ARNOLD. It was for your interest that he should sit, was it not?

Mr. RYAN. I do not know, sir; that is a question of opinion altogether.

We say, then, that there is distinct proof by the record, as well as by testimony of the witnesses, of the violation of the Statute, and of the morality on which the Statute is founded. You have not only the oaths of Cogswell and Chandler, not materially disturbed by Kane, that the defendant had been of counsel for Kane in the subject matter of the Howe cause, on which the defendant sat and adjudicated as judge. You have their oaths confirmed by the whole record of the Parsons & Lawrence suit, confirmed by the record of the very Howe suit itself. The whole history of these causes, record and oral, establishes beyond a doubt, that when Judge Hubbell adjudicated in the appeal in Howe *vs.* Kane, he violated his moral duty as a judge, violated the positive provision of the Statute. Proof can go no farther.

After the suit of Howe against Kane had been commenced, an indictment was found in the Circuit Court of Milwaukee county against Kane, for perjury alleged to have been committed in his answer to the Howe bill. There, again, if my positions are true, Judge Hubbell had been of counsel for the party on the subject matter. He sat as judge and gave judgment in the cause. He sustained a Demurrer to that indictment. After that indictment was disposed of, another indictment was found by the Grand Jury of Milwaukee county against Kane, for perjury assigned as having been committed—in what? In the very identical answer drawn for him by Judge Hubbell, and signed by Judge Hubbell as his solicitor. It seems to me, apart from questions of law, Mr. President, that a little delicacy, a sensitive judicial delicacy, would have dictated to any lawyer so situated towards the case, not to sit in judgment on an indictment so founded, even if not legally disqualified. I think delicacy would teach any

judge not to sit upon an indictment for perjury assigned upon a paper he had himself drawn. I think delicacy, since we speak here of delicacy, should have withheld Judge Hubbell from sitting in judgment upon an indictment against his own client, assigning perjury on an answer which he himself had drawn, and which he himself had told Judge Chancellor he feared did contain perjury. I think that specification is as strong as any that can be founded under the statute. If the statute is ever to apply, if the statute is ever to be vindicated, it is in this instance, where the counsel was not only the counsel of the party in the subject matter, but had drafted, framed, signed, and was professionally responsible for the very document on which perjury was assigned, and yet sat in judgment on the indictment. If that monstrous indecency, that aggravated violation of the law, is to be sanctioned by an acquittal here, the statute and the principle of morality back of the statute, are idle, are senseless, worthless words, unmeaning phrases, paraded in the statute book to dupe the world.

Here I apply all that I said on the relation of attorney and client; all that I said on the morality and object of the statute. They apply with solemn force to these cases, and to this defendant. I will not repeat here what I said of them. I hope that it is yet in your minds. But before I proceed to the next specification, another thing growing out of these cases suggests itself to my mind, and I beg leave here to make a personal explanation. The counsel says I was one of Kane's counsel, and argued the appeal before Judge Hubbell. It is very true that I did. I have already stated it. I did not know, Mr. President, that I was responsible for the character or the action of the judges before whom I appear in my profession. I beg leave to decline any such responsibility. I have no spiritual intuition; I have no spiritual foreknowledge. It is possible that I have appeared before as bad judges before; it may be that I shall appear hereafter before courts as corrupt as those of the Second Circuit. I appear for my clients, and advocate their interests before what courts they and I please; but the judges who preside there, not I, are responsible for their character and acts. I am no more responsible for the corruption of the court in which I practice, than I am responsible for the acts of the felon I may happen to defend. It is true that I appeared before the Supreme Court, and argued my client's appeal before the court, this defendant sitting on the bench. I would do it again in the same circumstances. I am not the keeper of the Judge's conscience. Upon his own conscience and his own responsibility, he sat or declined to sit. I had no power over it. I am not answerable for it. It is true, too, that I argued the demurrers to the indictments before him; on the last indictment very reluctantly, as the gentleman very well knows. I was urged to do it, and I did it. But there, again, I neither knew the Judge's conscience, nor was I the keeper of the Judge's conscience. But that is not all. Kane tells you, that through all this litigation of Howe against Kane, he has no recollection of communicating to me anything about the Parsons and Lawrence suit, except bringing to me the stating part of his answer in the Parsons and Lawrence case. I had no connection whatever with the Parsons and Lawrence suit, and did not know there was such a suit at all, until I had been long engaged in the Howe suit. When Cogswell was examined before Judge Larrabee, Kane told me that Cogswell had answered very differently in the Parsons and Lawrence suit; and that, I think, was my first knowledge that there had ever been such a suit. At all events, when I was drawing Kane's answer to the Howe bill, I had never

seen his answer to the Parsons and Lawrence bill, and was anxious to know what it was, for fear of any conflict between the two answers. He brought me, as he told you, a copy of the stating part of his answer, a mere memorandum for his own use which he had, without any name or signature to it, of party or counsel. It was just what I wanted, the stating part of the answer. I did not ask, and he did not tell me who drew it. I did not think or care who drew it. I only wanted to know what he had sworn in it.

Judge HUBBELL. You talked it over on the argument of the demurrer.

Mr. RYAN. I talked over the bill and answer recited in the indictment. I did not talk over who drew them, I did not know, then, who drew the answer. If I had known it, it would have been utterly immaterial to the questions I had to argue. I had never heard or thought of Kane's answer to the Parsons and Lawrence bill, from the time I drew his answer to the Howe bill till the indictment was found upon it. And then I had no thought or care who drew it. I had heared of it for the first and last time before, I think, when I drew his answer in the Howe cause.

Judge HUBBELL. It was long after that, that you argued the demurrer before me.

Mr. RYAN. Why do you say it was long after? Of what consequence is it, that it was long after, when Kane himself, your own witness, tells you here that he brought me a mere memorandum copy of the stating part of that answer, with no name whatever upon it, to guide me in drawing his other answer? I was never told, I never knew, and I did not care who had defended the Parsons and Lawrence suit for him. If I ever heard of your connection with it, it did not interest me or dwell on my mind. If you want to know, I will tell you what I believe; what I have reason to think some of the Supreme Court supposed, and was generally supposed; that you had been of counsel in the original transaction between Kane and Cogswell, out of which the whole litigation arose. But I did not then nor till after, know that you had drawn the answer.

Judge HUBBELL. I say you knew it, and spoke of it on the argument of the demurrer.

Mr. RYAN. I did not know it and did not speak of it.

Judge HUBBELL. I say you did and Judge Chandler too.

Mr. RYAN. I suppose Judge Chandler knew it. I did not. I abide by what I say. Kane says further—and the gentleman commented in this connection upon part of it, but did not quote all that Kane said—that he thinks I said to him, in relation to one appeal in that cause, that Judge Hubbell ought to sit upon it in the Supreme Court; but Kane tells you that this was upon an interlocutory appeal, not involving the merits of the case, but involving a mere question of practice. I have no recollection of having said so. It is very possible I did. I think it very possible that in the intense struggle we had for two or three years in that cause, with all the excitement of the counsel on both sides of it, with appeals almost every term of the Supreme Court, that if Kane had told me that we could reverse some of the decisions before the Old Gentleman in Black himself, I might have advised an appeal to him. If in fact I did tell Kane what he states, I may have said wrong. If said at all, it was said in ignorance of the precise relations of the defendant to him, which he does not pretend I knew even according to his own version of them. And applying only

to a mere question of practice, was a very different thing from desiring that he should sit on the actual disposition of the whole cause.

Mr. ARNOLD. I wish to ask you this question; whether you did not say to Mr. Kane, that in your judgment Judge Larrabee had been bought up and was a mere tool in the hands of Judge Chandler?

Mr. RYAN. I never told him so and Kane did not testify so.

Mr. ARNOLD. He said so to me.

Mr. RYAN. I cannot say what he said to you. But whatever he may have said to you and you repeat from him to this Court, is very poor evidence in the cause. The gentleman volunteers to bring in the name of another Judge, not at all in question in this case. The gentleman volunteers questions here, to bring before this Court the private opinions which counsel might have repeated to their clients, of the judicial conduct of other Judges in their cases. The gentleman volunteers to mix into this case, the controversy between Kane's counsel and Judge Larrabee. I thank the gentleman. I thank and admire the gentleman for the courtesy and kindness. But he can make no controversy between me and Judge Larrabee, or Judge Larrabee's friends.

Mr. ARNOLD. I do not say anything; I only repeat what Mr. Kane told me.

Mr. RYAN. Well, if it was essential to your views of this case and consistent with your views of propriety, you should have examined Kane upon his oath on the stand. You ask him in private and repeat in Court, what is utterly irrelevant, not to say more. But as Judge Larrabee's name has been introduced in this manner, I owe to him and to myself the contradiction of the gentleman's information thus intruded into this cause. I never told Kane so. I did tell him that I believed Judge Larrabee to be prejudiced against him. I thought so. I thought him prejudiced by the statements of the bill. I thought they had made an undue impression on him. And I moved him to remove the cause to another circuit, under the Statute, on the ground of his prejudice. I also moved the Supreme Court for a Mandamus to compel him to correct a judicial act of his in that cause. The Judge was excited and I was excited. I was excited because I thought him strongly prejudiced; because I thought, in my zeal for my client, he had done my client injustice. He was excited because he thought that his judicial character was assaulted. I felt that the motion for a Mandamus would break our personal relations, and it did.—They remained broken for a long time. But the excitement passed. I could do justice to his motives, though I still thought him judicially wrong in some of his decisions in that cause. He, I think, could appreciate my zeal for my client. And I can say in justice to him and to myself that our personal relations are restored, after a controversy in which neither of us, I think, lost confidence in the integrity of the other. I certainly have the highest respect for his.

I had no intention of going this length in my explanation in my own behalf. The interruptions I have met with have drawn me along. I see the object. They try to make me responsible for the conduct of the defendant in these specifications, as they have attempted to hold Mr. Finch and Mr. Downer responsible, in cases in which he sat against the statute, and in which they happened to be counsel. They have no responsibility, I have no responsibility, for the defendant's conduct. They and I took him as we found him. We are none of us keepers of his conscience. God forbid. But the whole argument is utterly wrong and irrelevent. If it were so, if we were wrong in not throwing

up our causes, if we were wrong in appearing before him—was he right in a positive violation of his duty? In positive disobedience of the statute? In positive disregard of judicial impartiality? The truth is, they have grasped throughout at every possible collateral issue, and collateral question. Strong signs of the weakness of cause in the minds of counsel.

I will pass from these matters now, reiterating what I said before, that there is the statute and there is the proof. And unless the statute is a dead letter, a conviction must follow such conclusive proof of violation in letter and spirit.

Proceeding on, we come next to the case of Hungerford and Cushing. And before entering upon the discussion of this specification, although the respondent and one of his counsel have disavowed what was said by the other, I deem it due to the Assembly for whom I speak, I deem it due to the State itself, to say that the personal attack made in the discussion of this matter, upon an absent and eminent person, was most unwarrantably made and most improperly thrust into this case. I know little personally of General Cushing; I have seen him but a very few times; but I know enough of the public history of this country, to know that he is a man of distinguished talents and distinguished attainments; that he has honorably occupied many eminent positions, civil and military; and that he is now in the very high office of Attorney General of the United States, the head of the bar of the United States. These may be no reasons for sparing, upon a proper occasion, proper animadversions on his conduct or character. But his conduct or character had no more to do with these specifications, had no more place in this cause, than the conduct or character of any other gentleman in the President's Cabinet. These specifications are founded on a cause, to which he is a party; but his character and conduct have nothing to do with them; are not involved in this cause, directly or indirectly. If the gentleman has a quarrel with him, this is not the place to follow it. It was bad taste, bad feeling, bad judgment, to assail his name here in his absence. I did not expect, in this Court, to hear the Assembly of this State insulted, to see this Court itself insulted, by the repetition of a scandalous story, which I should have deemed beneath notice, if I had only heard it, with others like it, out of doors;—that Caleb Cushing's money was the lever which moved this prosecution! Mr. President, I ought to know something of that. They say that I am the life and soul of this prosecution. Without claiming that, I think I ought to understand what levers put it in motion. Caleb Cushing's money had nothing to do with it; no man's money had.—No money was in it or went to it. I have told you what moved it. And as to General Cushing, I know of nothing said or done by him to forward or favor this prosecution. I do not believe that he has said or done anything to help it. It has not sought his help and does not need it. I can say for myself, that since this prosecution was first contemplated, I have received from him no letter, no message, no word, on the subject. I have not seen him in that time, and have had just one letter from him; a mere note, right curt and official, relating to the appointment of my friend, Mr. Sharpstein, to the office of District Attorney. As to his money, if it were here, who has received it,—the Assembly, their Managers, who? I must be sadly cheated, in that case; I think I should have been entitled to a share of it and I certainly have known nothing of it. Mr. President, this slander upon General Cushing and upon this cause, repeated here, is an insult to

the State, which I repel. As a mere street slander, I took no more notice of it than of any other vagabond lie.

I shall consider together Specification 2 of Article 4, Specification 8 of Article 7, and Specification 4 of Article 9. They all relate to the Hungerford and Cushing case. It seems that prior to filing the bill in that case, Hungerford together with one Green and one Purrinton, had made conveyance of certain lands on or near the river St. Croix, of which the title was then in the United States, to General Cushing. Two deeds were executed; one absolute upon its face, containing no declaration of trust, although I think it does purport to be made to Cushing as a trustee; in the other, certain trusts are declared. The effect was that Hungerford and the others conveyed the land to Cushing, upon trust that within a given time thereafter, Cushing should do certain acts and hold the land upon the trusts of the deed; and that upon his failure to do the acts within the time, then the estate conveyed to Cushing should cease. After the lapse of the period povided for the doing of the acts by Cushing, upon which the trust estate was to depend, Hungerford filed his bill in one of the Circuit Courts of this State, stating the conveyance; stating the lapse of the time limited for the performance by Cushing of the acts, on which the trust estate was conditioned; stating Cushing's failure to perform the acts; charging that the trust estate had thereby lapsed, and praying reconveyance and account.—That bill found its way, by changes of venue, into the Circuit Court of Dane county. A final decree was there made upon it, in favor of Hungerford, declaring in effect that the trust estate had lapsed as claimed in the bill, declaring the estate of Cushing in the lands determined, revesting in Hungerford the estate conveyed by the trust deed, and ordering an account. From this decree an appeal was taken by Cushing to the Supreme Court. Pending the bill and before the decree, the lands were coming into market; and Hungerford applied for and obtained a pre-emption to some or all of the lands. In order to procure a patent on his pre-emption, he was obliged by law to take an oath, that at the time of taking that oath, he had made no agreement or contract, whereby the title he should acquire from the United States would inure to any other person or persons. That is the substance of the oath required by the laws of the United States, so far as it affects this question. Hungerford took the oath, after having executed the deed to Cushing and while that deed was *still* outstanding, uncancelled, and undisturbed by the judgment of any court. He made oath that he had not made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title he might acquire from the Government of the United States, to the lands covered by the pre-emption, should inure to the use or benefit of any one except himself, or to convey or transfer the said land or the title he might acquire to the same, to any other person or persons whatever, at any subsequent time. That is Hungerford's oath. Before he took it, he had conveyed to Cushing. He had conveyed to Cushing with covenants of warranty. He had executed the trust deed, declaring trusts for the benefit of persons other than himself. Upon that oath he obtained a patent for the land.

He had filed his bill to avoid those conveyances and trusts. He had set up in it that the condition upon which the title conveyed was to rest, had never been complied with by Cushing. The question in the civil suit was this—had Cushing, or those who claimed under him, so done those acts required by the

deed to be done, that the conveyance remained of subsisting validity; or had they so omitted to do those acts, that the conveyance had ceased to be of subsisting validity, had ceased to be of force to vest the title in Cushing, for the use or benefit of any one except Hungerford himself.

What was the question on the indictment? The question was, whether Hungerford at the time he took the oath, had made any contract or agreement by which the title he acquired by the patent from the United States, inured to the use of any one but himself. The question in the two suits were identical. The question in both suits was the subsisting validity of Hungerford's conveyance to Cushing. That question depended entirely upon Cushing's compliance or non-compliance with the conditions of the trust. If Cushing had so performed the conditions of the trust, that the conveyance continued a subsisting conveyance to him upon the trusts declared, then Hungerford could not have the relief he sought by his bill, and the oath he had taken was false in fact. On the other hand, if Cushing had so failed in the conditions of the deed to him, that it had ceased to vest a title in him for the benefit of any one except Hungerford, then Hungerford was entitled to his decree, and the oath he had taken was true in fact. The proof which would make a case for Hungerford in the civil suit, would acquit him upon the indictment. The proof which would defeat Hungerford upon his bill, would convict him upon the indictment. They were the same identical questions of fact and law. The very pre-emption is set up in Cushing's answer as a material allegation against the complainant's right to maintain the bill. The two records are here. I have given the questions which appear to me to arise, beyond doubt upon them. I ask the members of this Court to read these records, to study them. I know there is one Senator here who must be far more familiar with this chancery suit, than I can possibly pretend to be from the examination I have given to it here. He undoubtedly saw at a glance, the identity of the questions. No lawyer of his pretensions, looking at these questions with the impartiality of a judge, could fail to see the identity of the questions in the two records, with far greater force than I am able to point it out.

In the summer of 1851, I think on the 25th of July, a final decree was made by Judge Hubbell in the Circuit Court of Dane county, in the civil suit of Hungerford against Cushing. In the same month of July, upon the 9th day I believe, a motion to quash the indictment against Hungerford was filed and argued by Hungerford's counsel, in the United States District Court. I am not able to state precisely when, but that very summer it appears, probably that very July, Judge Hubbell was consulted by Hungerford upon the indictment, and gave his professional advice and counsel to Hungerford upon it. I cannot say whether that was before or after the decree in the civil suit; and I do not care. If it was before he signed the decree, he must have made the decree with his mind fresh from his consultation with Hungerford or Hungerford's counsel. If it was after the decree, the ink could scarcely have been dry upon the pen with which he signed the decree, when he was cogging in private with Hungerford or his counsel, on the kindred questions of the indictment. At the very time he made the decree, he must have been tampering about a retainer for the party, in whose favor he made the decree, involving, as the gentleman tells us, $100,000 or $150,000. He is tampering with one of the parties upon the very subject matter of a suit of that magnitude, when it is in proof here that

it was known to every body, that let the decree be what it would, it was to go by appeal to the Supreme Court, where he would again have to pass upon it. I stop to make no comment upon this. There is the fact, with its antecedents. There was this Judge deciding a cause of $100,000 or $150,000, communicating and consulting on the same subject matter with one of the parties, with the party in whose favor he decided.

And let me here, while it is in my mind, state this most significant fact. In every one of these cases where he is charged with having sat when he had been of counsel for parties, the proof is, that he decided always for the interest of his client, never against it, not once. In the Howe and Kane case, his vote and influence in the Supreme Court were for Kane; on the indictments, his decision was for Kane. In the Hungerford and Cushing case, his vote and influence in the Supreme Court, as well as his decree before, were for Hungerford. In the Hart case, his decree was for his client. If false to his duty as a judge, he was true to his retainer for his clients. A commentary, Mr. President, more forcible than any I can make upon the consequence, to the pure administration of justice, of enforcing the prohibitory statute.

I was relating the facts in the Hungerford and Cushing case, as they appear in proof. Let us follow them a little farther. You have, upon that same matter, his refusal of more than an hour to Mr. Hyatt Smith, Cushing's counsel, to argue the cause upon its final hearing. Perhaps immediately before the time when he was consulted upon the indictment, perhaps at that very time—he gave Mr. Smith the magnificent opportunity of one hour, to argue a cause which is contained and pretty concisely contained in this book. (Mr. Ryan held up to the Court the volume which contained the printed proceedings in Hungerford *vs.* Cushing, and in the Supreme Court.) It is said, in extenuation of this refusal of time, that the merits of the case had been argued upon the exceptions to Cushing's answer—the merits of the cause upon the pleadings and proofs, argued upon exceptions to the answer; that notion is amongst the novelties of this defence! But since they have introduced here the argument of the exceptions, look at his reply to Smith upon that occasion. I believe he made it, and I feel that every member of this Court believes it. We implicitly believe it, in spite of the zealous testimony of their witness, Mr. Knapp, who certainly exhibited a greater disposition to testify on one side of this cause, than any other witness upon the stand. Mr. Knapp may be honest, but I think him a very stiff-necked and prejudiced man, more confident than intelligent. He assented on the stand to almost every suggestion which Mr. Knowlton put to him; but when we came to cross-examine him, hardly a direct answer could be got from him. I cross-examined him for some time, and I was hardly able to obtain any intelligible answer from him. At most, he can only deny hearing the reply to which Smith testified. And his mere negative of hearing it, cannot affect Smith's positive testimony. Smith swears positively to a remark indicating the grossest prejudice, to say no more, on the part of the Judge. And that remark was made in the same cause, in which he was tampering with the other party, just about the time he made the decree.

Mr. KNOWLTON. Mr. Smith modified his remembrance of that remark very much, the second time he was upon the stand.

Mr. RYAN. I do not see very well how he modified it. I think when he was first upon the stand, he said substantially that Judge Hubbell stated to him

that Cushing had not answered the bill and could not answer it; and when he came back upon the stand, he added that the Judge, after saying that Cushing had not answered the bill, and could not answer it, said also in substance, that he believed Cushing's conduct a fraud from beginning to end. Now if that is modification, I should like to know what exaggeration is? But to leave all that, and to return to the hour to which the defendant limited Mr. Smith's argument. I assert now what I have asserted heretofore, what was my doctrine long before I dreamed of this case,—that no court has the power to refuse to counsel necessary and ample time to argue their causes. The Supreme Court of the United States have, I believe, a one hour rule, held up as a kind of terror to long speakers, but I am told that they never enforce it in practice. I have heard that Judge Story, listening in despair to one of those arguments which have a beginning, but seem to have no end, said—"My dear sir, if you talk the term out, I suppose we must stay here and hear you; but if you would take it for granted that the court knows something, it would save you some labor of speaking, and us some labor of listening." The right to be heard by counsel is a constitutional right, which—while it is exercised within reason—the courts here have no power to cripple or abridge. One excuse set up here, is that the refusal was not in court; that it was given out of doors. I cannot recall how the fact was; but that is immaterial. The refusal was the refusal of the Judge, as judge, and on it the counsel acted. When the argument was about to take place, he set that limit to it. And he cannot nor be suffered to turn round and say, that because he said it out of court, counsel should not have believed him.

Remember that Mr. Rantoul, an eminent lawyer, had come here from Boston to argue the cause, and had gone away; that Smith had been here and had returned to Janesville, under the impression derived from the Judge, that the cause would not then come on. Judge Hubbell—not Hungerford's counsel—but Judge Hubbell himself, telegraphed to Smith to return and argue the case. Smith tells you that under these circumstances, he was anxious to have the cause deferred till the next regular term. He urged that it would make no difference to defer it till the next regular term. He urged that it would make no difference to defer it till the regular term, as it would go to the Supreme Court on appeal in any case, and as the regular term would be within time for the next term of the Supreme Court; but he could not delay the hearing. Judge Hubbell forced the case on to a hearing at a special term, and refused Smith more than an hour to argue the cause. It would have been very different if this had been at a regular term. If the cause had been ready for hearing, had been reached in its order, and the complainant were urging on the hearing, at a regular term, when the time of the court was limited; if the Judge had said in that case—"If you insist upon a hearing of this case now, it is my duty to hear it, but I cannot hear you at length—I must limit you in your argument;" that would present the case in a far different aspect. But to force it on out of list order, to force it on at a special term, to insist without excuse that the counsel should have but one hour to argue a cause, which I believe took several days when it finally came to be argued in the Supreme Court; was not only an arbitrary refusal of the constitutional right, but was a circumstance strong in suspicion, even if uninterpreted by its antecedents in this extraordinary case.

Well, it is said again that the argument in which the Judge refused but an hour to Mr. Smith, was only upon a question of parties. That is very easily

disposed of. In the first place, Smith tells you he did not then know that the bill was dismissed as to the other parties. In the second place, the question of parties was only one question; there remained for argument the merits of the cause. In the third place, it was precisely in the same status, as when it consumed several days in the Supreme Court. I do not know how many. The gentleman on the other side can tell, as he was one of counsel who argued it.

Mr. KNOWLTON. It took us a week to argue it, it travelled nearly all over the world.

Mr. RYAN. Well, if it was expected by Judge Hubbell to travel over the world in an hour, it was a case for Puck, who I believe remains to these days of steam and electricity, the only gentleman who has put a girdle round the world in an hour.

But to proceed with the cause. An appeal was taken from the final decree to the Supreme Court. That appeal came on to be heard in the old Supreme Court; and upon that appeal, involving the questions I have stated—the amount I have stated, Judge Hubbell, the feed counsel of Hungerford on those questions, sat as a Judge. Aye, Mr. President, he sat as a Judge between those parties, towards one of whom he had evinced such bitterness of prejudice, with the fee—big or little, I care not—of the other in his pocket, he sat *in* that Court and urged his client's case in the consultation room, as any other *counsel* would represent his client at the bar. But to pass from that for the present, let us pursue the history of the case. The Supreme Court reversed the final decree and remanded the cause to the Dane Circuit Court. The Dane Circuit Court immediately made an order to vest the posession of the disputed premises in Hungerford, pending the litigation. From that order, Cushing seeks to appeal. One of his counsel here in Madison telegraphs to Mariner in Milwaukee, to have the amount of bail on the appeal fixed by the Judge. Mariner goes to see Judge Hubbell, and inquires the amount he should put in an appeal bond. Remember that this order, as appears by the record, was made without any notice to the other side, as required by the rules. It was made behind the back of Cushing's counsel, and when he discovers it he seeks to appeal from it. Remember also that it was the only order made by the Circuit Court since the reversal of the final decree by the Supreme Court. And yet Judge Hubbell asks Mariner, "What order?" How could Judge Hubbell be in the dark about the order Mariner wanted to appeal from, when he himself had made the order, and knew that it was the only order in the cause from which an appeal lay? He knew what order, knew it well. His question was a quibbling evasion of the young man's request. I have no time to comment on his evasive insincerity, though it is full of meaning in the case. Finally, he fixed the amount at ten thousand dollars. I do not undertake to say, but it looks to me like a monstrous amount.—But what else does he say to Mariner?—"Judge Cushing has commenced a suit in the United States Court. Judge Cushing must either fish or cut bait." What the precise meaning of that term with the defendant is, I do not know. I only remember that the complaint was made by him of Hart's wife, that she would neither fish nor cut bait. At the bar and on the bench, the defendant seems to have a common imputation on those who stand in opposition to his clients' purposes—they will neither fish nor cut bait. Poor Mrs. Hart in Ireland, Cushing on the Supreme Bench in Massachusetts, come alike within the Judge's threat, they must fish or cut bait.

I suppose it means here, that Cushing must stand out of Hungerford's way. But there is more in this interview. He seems angry at the appeal. He seems angry at the action brought by Cushing in the United States Court. That was taking the case beyond the reach of his retainer for Hungerford. He tells Mariner that this will not do; I do not remember the precise language—"Mr. Mariner, this thing won't do. Judge Cushing is a man of eminence and learning. I have been his friend more than Hungerford's, but now he must either fish or cut bait." That is his idea of judicial impartiality. He cannot comprehend impartiality. Sitting as Judge in a cause of $150,000, and wishing to disabuse one of the parties of a suspicion that he favors the other party, it never occurs to him to assert impartiality; he asserts partiality the other way. He was more Cushing's friend than Hungerford's. He discloses the true character of his mind, his incapacity to stand erect between the parties, his necessity to lean to one or the other. To show that he does not lean one way, he boasts that he has leaned the other. More Cushing's friend than Hungerford's! Is that Judge Hubbell's idea of judicial duty? He says in effect that because he has been more friendly to Cushing than to Hungerford heretofore, he is going to balance the account of judicial impartiality, by being more friendly hereafter to Hungerford. He does not wait for the action of the party he suggests it himself. "He will enjoin Judge Miller and Judge Miller's Court." He has been Cushing's friend in this suit and Cushing must not resort to that Court. He must fish or cut bait. And those are his notions of judicial duty. And such is the administration of pure and uncontaminated justice, in the second judicial circuit! We have borne it long. How long must we bear it?

We come now to the case of Hart and Hart, a very simple and conclusive case. They urge here too, that we have not proved the payment of a fee by Hart to his counsel, Judge Hubbell. It is immaterial, as I have already shown, whether he was paid or not. The weight of the proof, however, is that he was paid. Mr. Albert Smith says that Judge Hubbell told him, in reference to his employment in that suit, that Hart was a good pay-master, had paid him and would pay Smith well. The only evidence offered to rebut this, is that of the brother and administrator of Hart. Hart's brother testifies that he came into possession of Hart's papers some six months after his death, and that he found amongst them no receipt from Judge Hubbell. That is a singularly remote and weak negative, as little pregnant as any negative, I ever met. Hart may have paid and taken no receipt. He may have taken a receipt which never reached his administrator's hands. But that as I have said is really immaterial. The history of that cause is proved by Mr. Smith and proved by the records, and what is it? You find Judge Hubbell on the 5th of December, 1846, writing a letter, as Hart's counsel, to Judge Irvin, urging Hart's claim to a divorce and enclosing to him Hart's petition for a divorce from his wife. You have here the original letter and the original petition. You find the petition drawn up by Judge Hubbell, here before you in his own hand writing, as presented by him to Judge Irvin, setting up the same identical ground of divorce and no other or different, as the one subsequently filed by Albert Smith. There is one difference in the statement, but no difference in the grounds of the application. The petition drawn up by Judge Hubbell, states that Hart's wife never had replied to his letters, when the fact was, she had. Smith in copying the petition left out that averment, because he knew it to be untrue, and had indeed been

advised by Hubbell that he should have to use the letters as proofs in the case. With that difference the two petitions are substantially alike and the ground of divorce set up in them is identical. The ground in both is, that the wife had refused to accompany the husband in his migration to America. Both petitions set forth Hart's emigration to this country, Mrs. Hart's refusal to accompany him, his offer since his arrival to bring her over and her refusal to come. Both set up these facts as such a desertion on the part of the wife as warrants a divorce—the same identical ground. All this is hardly denied here. But it is said—in keeping with the quibbling technicality of most of this defence—that the Specification is badly framed, and that the proofs do not fill it. Let us see. The Specification is, that the defendant had "made application for such divorce to the Hon. David Irvin, Judge of the second judicial district, of the territory of Wisconsin, in the district court for the county of Rock in said territory, which application had been refused by the said David Irvin, for want of jurisdiction of the courts of said territory, to entertain the same." Now, it is in proof that Judge Hubbell presented the petition he had drawn to Judge Irvin accompanied by a letter urging the Judge to entertain and act on it. That petition is directed "To the Hon. David Irvin, Judge of the second judicial district of the territory of Wisconsin, and presiding Judge of the district court of the county of Rock, in said territory." It seems to me that the proofs are precisely the same as the averment. We do not aver that he had made the application to the district court of Rock county, or that it had been refused by that court. Judge Irvin was not the court. I believe the territorial judges did not claim to be vagabond courts, going about the world carrying peripatetic tribunals on their backs, as the snail carries its shell. That ambition was held in abeyance for judicial dignitaries of the State government. Was this application made by the defendant to Judge Irvin? So the proof shows. Was it made to Judge Irvin as judge of the second judicial district of the territory of Wisconsin? You have the proof that it was. Was it made to Judge Irvin, as such judge, in the district court of Rock county? That is the proof. Was it refused by Judge Irvin as averred? Such is the fact in proof. We do not aver that the application was made to the court. We do not aver that it was refused by the court. The papers are addressd to the judge of the court, and enitled in the court. But in fact they never got into the court, simply because Judge Irvin refused to entertain them, and returned them to this defendant. Judge Irvin acting thus out of court, was not the court; and his refusal was not the refusal of the court. But the application was made to him as judge in that court, and refused by him precisely as averred.

I desire to call your attention once more to this letter. (Mr. Ryan here read the letter of Judge Hubbell to Judge Irvin.) Here the defendant discloses his full knowledge that that this woman was absent, was in Ireland, and had never been in this country. Waiving the question of jurisdiction here,—I pray you to mark this; that this defendant, when he was soliciting Judge Irvin and felt bound by some rule of propriety in such a case, admits that the "wife should have personal notice," in order that "she might suffer no wrong." Acting as Hart's retained and avowed counsel, he is compelled to make that concession to the rights of this absent wife. But when he is Judge upon the bench, acting on the same subject with the same person, decreeing the divorce as Judge which he had failed to obtain as counsel—he forgets his own decent and salutary ad-

mission of right; forgets what he felt compelled to stipulate for with Judge Irvin, that this poor wife ought to have personal notice to secure her against judicial wrong; fogets as Judge the morality which he felt compelled to observe as counsel; and gives this wife in Ireland notice of the proceeding to unwife her, in a Madison weekly paper. He hands his client and his client's papers over to Smith. He tells Smith what he had done on his retainer for Hart; he tells Smith that he himself, as Hart's counsel, had written to Mrs. Hart to come to her husband and had received no answer; he tells Smith what Hart's evidence will be; he substitutes Smith in his stead as Hart's counsel, and introduces Hart to him. He employs Smith to renew before himself, the application which Judge Irvin had properly refused to entertain for want of jurisdiction; tells Smith that there will be no difficulty in getting the divorce. And well he might tell Smith so, when he was to be the Judge in his own client's case, and his client's wife was not to have the personal notice he admitted to Judge Irvin to be essential to justice; when she was virtually to have no notice. I presume the poor woman never knew of the proceeding. Certain it is that it was morally impossible she could have received notice of the proceeding to divorce her, in time to oppose it. I presume that she thinks herself Hart's wife to this day. Ah! Mr. President, I tell you that the law of divorce, as administered in the second judicial circuit in this State, is a terror to those who hold fast to their matrimonial ties; a terror to all women who—as this Judge's letter says of this Mrs. Hart—" will neither fish nor cut bait." I leave you to interpret that phrase from the testimony in this cause.

But that is not all. The measure of this wrong is not yet full. Hart had lived for years with his wife. He had left the country of their birth, of their marriage, of the graves of their children, where all her relations and associations were. She had not accompanied him. She had failed to follow him. This was the extent of her offence. Hart sought to be free from his marital ties to her. He retained this defendant as his counsel, to dissolve by law the ties which bound him to his wife. The defendant acted as his lawyer, and failed—righteously failed—as a lawyer to obtain the Divorce. He went as a judge upon the bench and entertained the husband's suit, in violation of his duty as a judge, and of the statute law of the land. But he did not stop there. He had been counsel against this poor woman; he was now judge; adjudicating upon her marital rights; he at last became a witness against her in the suit. A comprehensive combination of duties—counsel, judge and witness in the same suit! Let us see what the rule of legal ethics is. One of the learned gentlemen, wincing under the proofs against this defendant, undertook to obviate the rule as laid down in the standard American work on Evidence. The gentleman said he had examined the decisions upon which the text was based, and found that they did not sustain it. I can only say that Mr. Greenleaf is generally a very accurate writer, and that his text is generally well sustained by the decisions which he quotes. I have not had time to trace them in this instance.

Mr. KNOWLTON. The decision which he quotes is under the Spanish law, in which there is a positive inhibition.

Mr. RYAN. He quotes several English cases, and English elementary writers besides. And the reason he gives in the text is a cogent one, that it could not be expected that a judge could decide impartially on the weight or admissibility

of his own testimony. It is a mixture of functions which ought never to exist. Without time to recur now to the authorities quoted by Professor Greenleaf, I think I may take it for granted, that the rule he states is the well settled law; and in the absence of all authority to the contrary, I take it the Court will regard it so. I will read the whole section:

"Before we dismiss the subject of parties, it may be proper to take notice of the case, where the facts are personally known by the judge, before whom the cause is tried. And whatever difference of opinion may once have existed on this point, it seems now to be agreed, that the same person cannot be *both witness and judge*, in a cause which is on trial before him. If he is the sole judge he cannot be sworn; and if he sits with others, he still can hardly be deemed capable of impartially deciding on the admissibility of his own testimony, or of weighing it against that of another. Whether his knowledge of common notoriety is admissible proof of that fact, is not so clearly agreed. On grounds of public interest, and convenience, a judge cannot be called as a witness to testify to what took place before him in the trial of another cause; though he may testify to foreign and collateral matters, which happened in his presence while the trial was pending, or after it was ended. In regard to *attorneys*, it has in England been held a very objectionable proceeding on the part of an attorney, to give evidence when acting as advocate in the cause; and a sufficient ground for a new trial. But in the United States no case has been found to proceed to that extent; and the fact is hardly ever known to occur."

Here you see that in England the relation of attorney and client has been sometimes held to disqualify the attorney as a witness for his client. A sound rule, fast gaining way in our courts, and in the opinion of the profession. It will soon be the settled law in this country, and I would to God it was so to-day. No attorney, no counsel, should ever permit himself to be witness for his client, to give evidence in his own cause. The evidence of an attorney for his client is always suspicious, is always suspected. The reason is the same for which the statute disqualifies a judge. Mr. Greenleaf says that there are no American decisions on the subject of attornies being witnesses in their own cases, because the practice is here unknown. I would, for the honor of the profession, that it were unknown. But with what far greater force does the rule of disqualification apply to a judge. How can he be expected to weigh his own evidence impartially, to act with judicial impartiality upon it? Here you see that the rule is settled, and has long been so. That rule was violated by the defendant wilfully. I say wilfully, because I am sure in assuming that he knew the rule. If every ignorant layman is assumed to know the law at his peril, surely the judge who voluntarily assumes to administer the law, must be presumed to know it. And here it was violated doubly; violated as counsel, violated as judge. Counsel, judge and witness, in one and the same cause! A monstrous concentration of iniquity!

Having acted as counsel, having entertained jurisdiction as Judge, having testified as witness, against this poor woman, who did not follow her husband, and who, as far as the proofs seem to go, was deserted rather than deserting, the defendant decrees divorce against her. When the decree drawn up by Smith, is brought to him, he does not think it strong enough; he alters it to make it more emphatic. And by the way, he not only altered the decree as Judge, but he altered the petition drawn by Smith as counsel. You will recollect that

Smith submitted the petition to him before it was filed, and that he suggested an alteration in it which Smith accordingly made. He signed the decree. He signed it knowing that he had violated his duty as a Judge in entertaining the proceedings and in testifying in the cause to be heard before himself. He signed it without any open hearing in open Court. He signed it knowing that the Statute deprived him of the power or right to do so. The petition was on the ground of desertion. The Statute favored in such a case a divorce *a mensa et a thoro* only, though it permits a divorce *a vinculo matrimonii* in the discretion of the court. He decreed to his client, in a case certainly far from aggravated, a full divorce, unmarrying this unfortunate woman. He decreed that she had been guilty of wilful desertion of her husband. Let us look into the proofs against her and see how she had deserted him. Let us look into them to see living evidence of the monstrous impropriety of one man being judge, counsel and witness in one cause.

Hart's brother testifies that the parties had cohabited as man and wife in Ireland and lived together till Hart came to the United States. He says that about a year before, he wrote to his brother's wife, soliciting her to come to her husband and that he received no answer from her. That is all the substance of his evidence. Judge Hubbell testifies that he wrote a letter to Mrs. Hart, asking her, on her husband's behalf, to meet Hart in New York from whence he would bring her home to Janesville, saying that Hart would advance money for the expenses of her journey, if she should need it; that he requested an answer and obtained none. That is all the substance of his testimony. What else is there? Garbled extracts from what purported to be this poor woman's letters to her husband. Extracts selected for the purpose from letters, the letters themselves not being read or produced to the court. That is the evidence which the Judge receives, when he has been retained as counsel and used as witness. Garbled extracts from letters! What were the rules of evidence there? What did *they* avail to that poor woman? Her correspondence—which, by the way, this defendant had made her husband deny in toto in the petition which he drew—her correspondence for years was ransacked for passages to commit her—detached disconnected, unqualified, unexplained. And what are they? It would not be wonderful if some were found to commit her. What are they? Such of them as have dates, appear to be written the same year as the divorce. I will read them:

"You who have no ties of affection, don't forget that you are now happily relieved of the heavy log that has been around your neck these sixteen years—believe me, those who have not affection enough to enjoy each other's society are much better asunder.

"I received a parcel and letter per Mr. Gray, the beginning of this month. The letter being of a more civil character than any before received, I think it best to conclude our correspondence in as amiable a manner as possible.

"I think the cost of coming for me and taking your Robert and me out, would be upwards of two hundred pounds; it would be much better to send me that small sum, and let a stop be put to this correspondence.

"I have now given orders no more American letters shall be received for me, and again request an end to this most distressing correspondence.

"Before saying farewell (most likely forever) &c."

What else? What else beyond these complaints of a disappointed and de-

serted woman? What other proofs of that petition? What other evidence of desertion by that wife? Will you believe it? Not a thing. Not a proof more. Nothing else; except some vague evidence of the prosperity of the parties, absolutely nothing else. This was the whole proof of desertion to support the defendant's decree. This was the desertion, the wilful desertion of her husband for two years by that wife, which this decree recites to have been proved; upon which this decree passed, dissolving the marriage rights of that wretched woman, turning her forth upon the world, neither maid, wife, nor widow. That is the philosophy of uniting in one man, the functions of counsel, witness and *judge!*

But the iniquities of this case do not stop there. This decree, which Judge Hubbell did not sign in any reliance on the counsel who drew it, which he read and altered himself—recites that satisfactory proof was made to the Court of the due publication in a newspaper of notice of the application for a divorce. False, Mr. President, false in fact! No such proof was made to the Court, and the Judge knew it. Aye, sir, he signed that decree, reciting a falsehood, which he knew to be a falsehood. In signing that decree, he signed a false statement of a fact, essential to the validity of the decree, essential to the jurisdiction of the court to make the decree.

We all know what the satisfactory proof required by the Statute, *is; the affidavit* of the printer. When that decree was made, no such affidavit *was on file* in the county; no such affidavit appears to have been made. Smith testifies *that* the absence of the affidavit of publication was known to Judge Hubbell, when he signed the decree, and that by an understanding with the judge, he was to file the affidavit when he should procure it. The defendant, therefore, not only signed the decree in the absence of material proof, but knew that he was signing it without such proof. He not only signed the decree with a lie upon its face, but he wilfully did it knowing the lie to be upon it. Is this credible? There is the record.

The decree was made, signed and filed on the 29th of December, 1848. There was then on the files of the Court, no paper whatever purporting to prove the publication. On the 2d of January 1849, four days after the decree was in force, a paper was put upon the files. Here it is. It purports to be an affidavit of the publication by the printer of the Wisconsin Argus; it has a jurat dated the 30th day of December, 1848, the day after the decree; *but it* is not sworn. This affidavit of publication omits the oath; a very useless ceremony, an oath, in such a cause and such a Court. And to this day, that unsworn certificate is the only proof of publication in that cause on the files of the Court. That notice may have been published; it may not. Who can tell by this record? But to this day, no proof of publication has ever been made in that cause to the Circuit Court of Milwaukee Co., as this decree falsely recites. False then, it remains false now. The gentleman on the other side asked me once in the progress of this trial, if we contended in the language of this Specification, that this decree was improperly and improvidently made. I ask him now in turn, if it was not improvidently and improperly made? If not, in the name of decency, what decree ever was? What decree could be? Had the paper, filed on the 2d of January, been sworn, it would have been too late to support this decree or to redeem it from falsehood. But it was not sworn, and has never been sworn. Hart, I have seen, but did not know. His wife, I have never heard of except in this record. Hart is now

dead. Whether he married again in his life time, I do not know. Where she is, whether she is in life, whether she has heard of this divorce, whether she married again in his life time, I know not. But I do know that this monstrous divorce was *coram non judice* and invalid, from beginning to end; and that any other marriage of either, in the life time of the other, would have been bigamy. One marriage, following a far less doubtful divorce in Wisconsin, has been held adultery by the Court of Chancery in New York.

A more iniquitous proceeding, for a mere civil proceeding, never disgraced the administration of justice. It shocks our sense of justice even more than the infamous case of the Earl and Countess of Essex. Suppose that by some chance, this unfortunate Mrs. Hart, thus stripped of her matrimonial relations in her absence by this scandalous mockery of justice, has found her way to Milwaukee pending the divorce. Suppose that she had retained counsel to resist this divorce. In the name of the living God who created in us the sense of justice—aye, Sir, who administers justice in the end—what chance, what possible chance, what possible power or capacity would she have had, to resist this divorce? To protect her marriage right and name, before her husband's counsel, her husband's witness against her? How could she, a stranger and a woman, hope for the pure, chaste impartiality of justice between herself and her husband—her husband's counsel who advised, her husband's witness who proved the case against her, the judge between them?

That is the case proved. That is the case proved clearly, without doubt or contradiction; proved by the witness without the record; proved by the record without the witness. That is the case proved under the Statute of 1848, prohibiting the jurisdiction without consent in writing. That is the case beyond explanation or palliation. A more monstrous case was never bared to the gaze of the world.

And here, although I am warned by the length of this discussion to avoid all irrelevant discussion and choose to avoid it, I ought to say in my own behalf, and in behalf of the Milwaukee bar, whose opinion I think I know, there is no gentleman in this State more entitled to credit for unblemished integrity and truth of character, than Mr. Albert Smith. He has been assailed here, because he said that he was not friendly to the defendant. The counsel asked him why? The witness desired to answer; but I objected to the question, because I wished to shut out all collateral and irrelevant issues. And from what I since hear, it was a mercy to the defendant that I did object. But Mr. Smith's feelings did not color his testimony. He avowed them openly, honestly and broadly. He is a gentleman whose unsullied and high character makes such feelings harmless in a witness. He is incapable of coloring his testimony to gratify his feelings. And for myself and our bar, I repel with indignation the comments which the counsel saw fit to indulge in towards him. They seemed the more out of place, because Mr. Smith's whole testimony is confirmed, item by item, by these papers in the hand-writing of the defendant, and by the record of Hart and Hart.

This disposes of Article 4. You have four Specifications driven home by the proofs on the defendant. You have in proof before you, four several cases in which, having been of counsel, he sat as judge in violation of the statute under which he held his office, and in disregard of all pretence or show of judicial impartiality. If these proofs do not work a conviction, I cannot conjecture

what would. There is the statute and there are the facts. "Where the prohibition is, and the violation appears, the law assumes the intent." The intent is palpable here. I will not now dwell upon the enormity of these facts, I will not now repeat the moral policy of the statute. I will only say that if any lawyer is to be exempted from the prohibition of this statute, for the peculiar structure of his mind, for the peculiar integrity of his character, this defendant is not the man.

Article 3, is a single charge, without Specifications. It charges the defendant with having violated his duty in the sentence of a criminal convicted before him, by imposing a different punishment from that fixed by the statute. It alleges that upon the conviction before him of one Haney, upon an indictment for an assault with a dangerous weapon, with intent to murder, he imposed a fine as the punishment of the offence, instead of imprisonment in the penitentiary, as required by law.

The discussion on this case has turned mainly upon the construction of the statute and the frame of the indictment. The indictment is framed, as we understand it, and the able gentleman who drew it, intended, as under the 35th section, of chapter 133, of the Revised Statutes. This the other side deny. Several sections of the statute have been read and commented upon by the gentlemen, in support of their views. I do not think it necessary to follow them through the whole of their discussion. I shall confine my examination to three sections of the act. And first I shall read section 32.

"If any person shall assault another, with intent to murder, or to maim or disfigure his person, in any of the ways mentioned in the next preceding section, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars, nor less than one hundred dollars."

This is the section on which Mr. Knowlton commented at considerable length. His views in relation to the assault with intent to maim, seem to me immaterial to this question, and I do not propose to examine them. That part of the section which covers an assault with intent to murder, only enters properly into the question here. Section 31 relates exclusively to maiming. Before examining this section, let me read section 35:

"If any person, being armed with a dangerous weapon, shall assault another with intent to rob or murder, he shall be punished by imprisonment in the state prison, not more than five nor less than one year."

Mark the simple and obvious distinction. The 32d section provides for a simple assault with intent to murder, leaving the punishment discretionary between fine and imprisonment. The 35th section provides for a higher grade of crime, an assault with intent to murder with a dangerous weapon; and as the punishment for the graver offence, imposes imprisonment without any discretion to fine. The statute divides assaults with intent to murder, into two distinct offences: the one, where it is committed without a dangerous weapon; the other, where it is committed with a dangerous weapon. In the one case, the assault is committed without any weapon dangerous to human life; it may be committed without other arms than those which nature gives us. In the other case, the assault is committed with some weapon dangerous to human life. The crime in the latter case is not only more deadly, but is more likely to be deliberate. In every view of morals and law, an assault with a deadly weapon is

a more henious offence than an assault with a casual instrument, not deadly in its ordinary use, or with mere bodily force. The employment of a weapon dangerous to human life in its ordinary use, is always a distinctive and aggravating feature of violence. And the distinction of our statute, no novel one, is a righteous and judicious distinction. Thus dividing assaults with intent to murder, the statute does it for a practical end—the due distribution of punishment. The 32d section provides a wide margin of punishment, to meet the peculiar circumstances of aggravation or extenuation in eachcase. It gives the court a discretion ranging from five years' imprisonment down to a fine of a hundred dollars. The 35th section gives a margin of discretion in the punishment of from five years down to one year of imprisonment. But while the 32d section gives a discretion to punish either by imprisonment or by fine for the less offence; the 35th section gives a discretion only in the length of the imprisonment; fixes imprisonment in the penitentiary as the only punishment of the greater offence, and allows no discretion to punish by fine. The distinction is a sound and marked one. Whenever, therefore, a conviction is had upon an indictment charging simply an assault with intent to murder, the court has a discretion to punish by imprisonment ranging from one to five years, or—not imprisoning at all—to punish by fine only, ranging from one hundred to one thousand dollars. But whenever a conviction is had upon an indictment charging an assault, "being armed with a dangerous weapon," with intent to murder, the court *must* punish by imprisonment ranging from one to five years; it cannot punish by fine. The statute withholds the discretion to fine in that case, and the offender must go to the penitentiary. It seems to me that this plain statement relieves us from all necessity of following the learned gentleman's speculations on these and some other sections of the act.

It has been suggested—I think I may say facetiously suggested—that the 45th section might apply to this indictment.—Gentlemen can hardly be serious. Still I will seriously examine it. I will read section 45, which I believe none of the gentlemen who wish to apply it to this indictment have ventured to do. It is this:

"If any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein prescribed, he shall be punished by imprisonment in the state prison not more than three years, nor less than six months, or by fine, not exceeding one thousand dollars, nor less than one hundred dollars."

This is a section providing punishment for assaults with intent to commit several enumerated felonies of which murder is not one, or any felony, the punishment for which is not elsewhere provided by the statute. Now, assaults with intent to commit murder are divided into two classes, those made with a dangerous weapon, and those made without a dangerous weapon. Those two classes cover all possible assaults with intent to murder. If they are not committed with a dangerous weapon, they must be committed without one. Is the learned gentleman satisfied that these two classes embrace all possible assaults with intent to murder, or is any other kind visible to his discriminating perception? Well, the punishment for these two classes is specifically prescribed in sections 32 and 35 of the same act. How, then, can it be gravely pretended that section 45 providing for assaults with intent to commit any felony, the punishment for which is not elsewhere prescribed in that statute, can possibly apply to as-

saults specifically covered by other sections of the same statute? This indictment is certainly one or other of two things. It is either an indictment for a common assault only, or it is an indictment for an assault with intent to commit murder. In neither view of it, can the 45th section possibly apply. One of the defendant's witnesses came to the aid of his counsel here. Mr. Collins gave his opinion on the stand, that the 45th section might or could or would or should apply to this indictment. I cannot help that. Mr. Collins is, what they have called him, an able lawyer; I have better evidences than this opinion of his, that he is an able lawyer; but "*neque semper arcum tendit Apollo.*" When Mr. Collins said that the 45th section could apply to this indictment, he said what involved the proposition, that the indictment charges an assault with intent to murder, commited neither with nor without a dangerous weapon; and perpetrated as good a Bull as any out of Ireland, as good a Bull as his favorite 45th section, in punishing an assault with *intent* to commit *manslaughter*.

If this paper is an indictment at all, it is beyond all question an indictment for one or other of three offenses; either first, for a common assault only; or secondly, for an assault with intent to commit murder, without a dangerous weapon, under section 32; or thirdly, for an assault with intent to commit murder, with a dangerous weapon, under section 35.

Mr. KNOWLTON. Mr. Ryan, suppose an indictment framed under section 32, and it turned out in proof, that the assault was committed with a deadly weapon, could there be a conviction on that indictment?

Mr. RYAN. That is asking me a question which I am not prepared to answer with certainty, and which cannot be material here. It is substantially, whether one indicted for a less crime, can be convicted on proof of a higher crime, which involves in it the less crime for which he is indicted. I apprehend that he can. I remember now no case in which that has been specifically ruled. But the converse of the proposition is generally held; one indicted for a greater offence, may be convicted on the indictment of the less offence, included in that for which he is indicted. I recollect being lately asked the same question in effect, by one of the prosecuting Attorneys of our county, now Speaker of the Assembly. He asked it in relation to an indictment for manslaughter, now pending in our county, where he apprehended the proof would establish murder. I answered him, as I answer you, that I thought he could convict. We all know that at common law on an indictment for murder, conviction may be had for manslaughter. And looking at the question without any guide of authority, I can see no good reason why, if the State sees fit to prosecute for the less offence, a conviction cannot be had, which would certainly operate as a bar. All the higher grades of violent crime embrace in them lower grades of crime. The gentleman of whom I speak, however, seemed to lean to a different opinion. And as he is an able lawyer, I speak with some hesitation, in the absence of all authority, on the point. But I cannot see how the question can possibly arise here.

So much for the statute. Let us now see what the difficulty with the indictmentis. I will read it. (Mr. Ryan then read the indictment against Haney.) This indictment charges "that Haney, with force and arms, in and upon Arland did make an assault, and being then and there armed with a dangerous weapon, to wit, a pistol loaded with gunpowder and a leaden bullet, which he, Haney, in his right hand then and there had, held and pointed at Arland, then

and there unlawfully and maliciously did shoot, with intent then and thereby, &c." What is the objection urged against this indictment? We are told here that the indictment does not aver that the defendant was armed with the dangerous weapon at the time he made the assault. We are told here that it first charges a common assault, and then charges an assault with the pistol with intent to murder, or in other words, that the indictment is double. That is the same objection urged and overruled on the motion in arrest of judgment, as the counsel in the case testify, and the motion itself discloses.

This is a question of pleading to be settled by authority. I admit that the indictment might have been drawn in the form in which they contend on the other side, it should have been, and have been good. But that does not show that this form is bad. Both forms may be good. I can readily imagine that the first, casual view of this indictment might lead a lawyer not familiar in practice with criminal pleadings, to think it bad for duplicity. I confess it struck me so, when I first looked at it. But a little reflection, and a very brief examination, led me to believe it a good indictment. In the first place, apart from all authority, the whole is charged as one act. The count is that the defendant made an assault and then and there—that is at the same identical place and time, as part of one and the same act—used the pistol with intent to murder. Aside from all authority, I should therefore consider the indictment good. But the books of precedent seem to me to settle the question. I have not had time to look for express adjudications, nor do I think it necessary. I have here Archbold, whom I take to be as good an author on criminal pleading as we have. Most of his forms have been adjudicated upon; and in the absence of all authority on the other side, I apprehend his precedents will be held good. I beg the indulgence of the Court, while I refer them to a number of precedents to be found in his excellent work, framed precisely like this indictment.

And first, I shall look at indictments for murder. All degrees of assault with intent to kill, are embraced in murder by violence. And, therefore, the form of an indictment for murder by violence, will be a good precedent for the form of an indictment for an assault with intent to murder, substituting the intent to kill for the actual killing. The first form in Archbold is for murder by stabbing. His indictment first avers, in the same manner as this, that J. S. at a certain time and place, in and upon J. N. did make an assault; and then in a new member of the sentence, proceeds precisely like this indictment: "and that the said J. S. with a certain knife of the value, &c., which he the said J. S. in his right hand then and there had and held, the said J. N. in and upon the left side, &c., wilfully and of his malice aforethought, did strike and thrust, giving to the said J. N. then and there, with the knife aforesaid, in and upon the left side, &c., one mortal wound of the breadth, &c." You will see that the construction of this form of indictment for murder, is precisely the same as the construction of the indictment against Haney; that the subdivision of the act is the same, and that the phraseology as far as applicable is the same.

Senator ALBAN. Does the indictment in this case allege the act to be done feloniously?

Mr. RYAN. It does not. Nor would it be proper. This is not an indictment for a felony, but for an assault with intent to commit a felony. If it were an indictment for actual murder, it should charge the act as done "feloniously and of malice aforethought." But murder is not alleged to have been commit-

ted, it is only alleged to have been intended. In other words, the indictment charges a misdemeanor only. Our statute does not make it felony. The statute does not make penitentiary offences felony. We have no felony properly, though we use the word; and the statute only declares what offences shall be understood by the word, when used. The indictment in this respect follows the language of the statute on which it is framed, and that has been sufficient.* I may as well remark here, that the objection was taken on the motion in arrest, that neither the assault nor the shooting was laid "feloniously," but it was overruled by the defendant, and I conceive properly overruled.

But to return to Archbold. The construction of the form which I have read is precisely the construction of the indictment here. Both first allege the assault in one member of the sentence; then both go on in another member of the sentence, the one to allege the murder *then and there*, the other to allege the use of the dangerous weapon with intent *then and there;* both, and both alike, averring it as part and parcel of the same action. Now if one of these indictments be double, the other is; if one is bad, both are bad. And that is the common form of indictment for murder with a weapon; and if it be bad, all the indictments for murder in our courts are bad.

And this is no isolated, peculiar form.—Here is again the form of indictment for murder by shooting, using the same commencement; "the jurors &c., present that J. S., late of, &c., not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on &c., with force and arms, at &c., in and upon one J. N., in the peace of God &c., feloniously, wilfully and of his malice aforethought did make an assault; and that the said J. S., a certain pistol of the value of &c., then and there loaded and charged with gunpowder and one leaden bullet, (which pistol he the said J. S., in his right hand then and there had and held,) to, against and upon the said J. N. then and there feloniously, wilfully, and of his malice aforethought, did shoot and discharge," and so goes on to aver the consummation of the murder. There is a form identical with this indictment, *mutatis mutandis*, substituting the assault with intent for the actual murder. We might well suppose that this indictment was drawn from that form. So follow the forms of indictment for murder by throwing a stone, by beating, by riding over, by strangling, by drowning, all on the same construction and all liable to the same objection. So even an indictment for starving, where a literal assault is not necessarily embraced in the crime, the same form is used;" in and upon the said J. N. &c., did make divers assaults; and that the said J. S., on &c., at &c., him the said J. N. in a certain room &c., feloniously, wilfully and of his malice aforethought, did secretly confine and imprison, and that the said J. S. from &c., at &c., feloniously, wilfully and of his malice aforethought, did neglect, omit and refuse to give and administer and to permit and suffer to be administered, to him the said J. N., sufficient meat and drink," and so goes on to describe the murder. So also in an indictment against a woman for the murder of her infant child, here is the same form. And so in every precedent in this book of indictment for murder, except by poison, and for manslaughter, the same construction is used. It is not true that these are all statutory indictments. Most of them are for mere common law offences, and all of them are good at common law.

* See People vs. Pettit, 3 Johnson's Rep. 511.

So in indictments for assaults with intent to commit felony. The author gives one general form, "in and upon one J. N. in the peace &c., unlawfully did make and assault; and him the said J. N. did beat, wound and ill treat with intent (here state the felony intended &c.) and other wrongs to the said J. N. then and there did, to the great damage of the said J. N.; against the form of the Statute in such case made and provided and against the peace, &c." That is upon the English statute to punish "any assault with intent to commit felony." The same construction is used here in forms of indictment for an assault upon a woman quick with child, for an assault with intent to prevent arrest, for an assault on peace officers in the execution of their duty, for an assault on magistrates in preserving wrecks, for an assault and false imprisonment, for an aggravated assault and for a common assault and battery. (Mr. Ryan here read at large from these forms.)

If this indictment be bad because the use of the dangerous weapon is not averred in the same member of the sentence with the assault, then are most of these forms bad. If this indictment be double, then all these forms are bad for duplicity. If they are good, then this indictment is good. We have had no authority whatever against this indictment; I presume because none could be found. And all the counsel's sneers at the gentleman who framed the indictment, apply to Mr. Archbold as well.—If the prosecuting attorney of Dane county and expectant Attorney General, did not know how to draw an indictment for this offence, he erred in excellent company, with the standard authority on criminal pleading. Mr. President, this indictment is sustained before you by all the precedents read, and is a good indictment in substance and form.

But there is another view to be here taken of this indictment. The circuit courts have no jurisdiction of indictments for common assaults only. If the Judge had construed it as an indictment for a common assault only, it would have been his duty to discontinue all action upon it, to have dismissed the whole proceeding for want of jurisdiction. He could only entertain jurisdiction of this indictment, by holding it to charge an assault with intent, under some section of the Statute. That he did so is evident from his overruling the motion in arrest and from his pronouncing judgment on the verdict. If he believed the indictment open to the criticisms here made upon it, he must have rejected that part which avers the assault, as surplusage, and held the rest good as charging an assault with intent. And I am of opinion that the part which avers an assault in terms, might be rejected and leave a good count for an assault with intent. Leave out that part of the first clause of the sentence and you have the indictment charging the shooting. The shooting described, is a legal description of an assault without the use of the word, and the intent is averred. And that view of the indictment brings us back to the question, under what section does it come?

Now the averment of the intent to murder, as I have shown, clearly takes it out of the 45th section. And the averment of the dangerous weapon, as clearly takes it out of the 32nd section. It cannot, in any possible view, or by any possible construction, be a good indictment under any section save the 35th. And the Judge held it to be a good indictment; and in holding it to be a good indictment, must—independent of the testimony that he did so—have held it good under the 35th, and no other section. It is ridiculous to apply it to any other.

The criticism here, the real objection here, is duplicity. But if it were double, it would be equally double and equally bad under every section. If the Judge had held it double and had held that that was a good objection after verdict, it would have been his duty to arrest the judgment, and to discharge the prisoner. He had in that case, no other duty, no other authority. A conviction on an indictment bad for cause after verdict, is no conviction. And the defendant here can only escape from our charge, by charging himself with having wilfully, arbitrarily, without any authority of law, sentenced a man as a criminal, who had been legally found guilty of no crime whatever. That is the only escape. Whatever objections could be taken to that indictment, after verdict, could only be taken by motion in arrest. Such a motion was in fact made, raising all these and more than all these objections. That motion was fully discussed before the defendant. That is the testimony. If he then held these objections, now urged on his behalf, to be well taken, it was his solemn duty to arrest the judgment. He overruled the motion. He refused to arrest the judgment. He held all these objections, now urged with so bad a grace in his behalf, not to be well taken to that indictment. I quote his judgment against the argument of his counsel. I cite the authority of Levi Hubbell against the counsel of Levi Hubbell. He solemnly passed on all these arguments and solemnly decided them to be wrong. On that motion he had a choice of but two things. To hold the objections good and arrest the judgment; or to hold the indictment good and give judgment and sentence under the 35th section. One or other of those two things was his solemn judicial duty. Having refused to arrest the judgment, did he understand his only remaining duty? Or did he mistake, did he blunder? You have the testimony of Geo. B. Smith, the prosecuting Attorney. He tells you that after the motion in arrest had been argued, he and Judge Hubbell conversed together. He tells you that the question of the power to fine only was discussed, and that they both agreed that the prisoner could not be fined, but must be sentenced to the penitentiary. He tells you that they both agreed that the court had no other power, no other discretion, no other duty. Mistake or blunder is out of the question. When the motion in arrest was overruled, there remained nothing but the penitentiary for that unfortunate man. And this defendant in sentencing him to a fine instead of imprisonment, did it deliberately, did it wilfully. All the circumstances surrounding it show that. He fined Haney, knowing that he was doing what was not his duty. He omitted to imprison him, knowing that he was omitting to do his duty. He did that thing he should not have done, and did not the thing he should have done, wilfully, deliberately, purposely.

And what excuse, what palliation is set up for this deliberate violation of judicial duty, this exercise of a discretion against the law of the land? Why, that Thompson; that Haney's neighbors generally; that Smith himself, the prosecuting officer—who is not proved to have said so, who denies it unequivocally, but who says now, and may have said then, that he thought Haney more guilty of indiscretion than of malice, and who therefore doubted whether Haney would be found guilty by the jury—that these persons wished to have the unfortunate man fined only.

Mr. President, above us all, judges, jurors, witnesses, counsel, friends, neighbors—stands the law. To exercise a discretion out of the law, is to usurp a power above the law. Judges receive their powers to enforce the law, not to

override the law. If Thompson felt it a hard case for his unfortunate friend; if the man's neighbors generally felt it so; if Judge Hubbell and Smith himself, if all the State felt it so; they had their remedy. It was no excuse for usurping a power above the law. The constitution of the State provides for mercy to the victims of the law. It vests the discretion of mercy in the Governor; delegates to him the power of pardon and commutation. This conviction took place, this sentence passed, here in the Capitol, where the Governor's office is established. And those who felt for Haney should have appealed to the executive clemency. But the power of mercy given to the Governor is expressly withheld from the Judge. And when Judge Hubbell assumed to mitigate the punishment fixed by law, he usurped the functions of the Governor of the State. He assumed a constitutional power, expressly withheld from his own office. He usurped to the Circuit Judge of Dane county, a power vested expressly in the constiutional distribution of the sovereign power, in the chief executive magistrate.

Let me read what a great man and a great judge, a good man and a good judge, says upon this subject. When a pressure of public opinion, of public excitement, of public anger, fearful in extent and power, such as, thank God! is unknown in this country and will remain unknown as long as our people have faith in the integrity of their Courts—surrounded his Court and threatened it; he gave such an utterance to his duty, as became a great magistrate on a great occasion:

"Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain. Unless we have been able to find an error which which will bear us out, to reverse the outlawry; it must be affirmed. The constitution does not allow reasons of state to influence *our* judgments: God forbid it should! *We* must not regard political consequences; how formidable soever they might be; if rebellion was the certain consequence, we are bound to say "*Fiat justitia, ruat cœlum.*" The constitution trusts the King with reasons of state and policy; he may stop prosecutions; he may pardon offences; it is his, to judge whether the law or the criminal should yield. *We* have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted; none of us had any hand in his being prosecuted. As to myself, I took no part, (in another place,) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice; it was his own act; and he must take the consequences. None of us have been consulted or had any thing to do with the present prosecution. It is not in our power to stop it; it is not in our power to bring it on. *We* cannot pardon. *We* are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences."

Mr. President, noble words of truth and duty. I would to Heaven that those words of Lord Mansfield, in his judgment on Wilkes, were printed in bold relief in every Court House in the State, in sight of every judge upon the bench. Mr. President, I would to God that they were in this room now, to abide the issue of this trial, in living presence here.

That disposes of article 3. I come now to article 2. And I will first consider, very briefly and rapidly, specification 2 and 3. There is no question that the case is made out upon these specifications. Judge Hubbell, owning a note

of Humble's, goes to Graham and asks him to commence a suit on the note, in Graham's own name or in the name of some of his friends. The gentlemen say that the Judge had a right to commence a suit in his own name, in his own court. If he had done so and then sent the suit to another Judge for adjudication, it would have been at least an honest transaction. But there is a badge of fraud from the very beginning, in asking Graham to sue Hubbell's own note, in his own court, in Graham's name. It is in proof that Graham commenced a suit upon the note in his own name, and that Finch filed a motion to vacate and set aside the Sheriff's return to the process, and that Graham *moved* for leave to the Sheriff to amend his return; that the cause was called up; that Judge Hubbell then said he ought to send it away, not stating that he owned the note absolutely, but that he had some interest in it. Finch thereupon withdrew his motion and his appearance in the case. He says that Humble had told him that there was a good defence to the note, but went away and did not furnish to him the data to defend the suit, and that consequently he withdrew from it. Would Mr. Finch, an astute and capable lawyer, have withdrawn that defence, if anybody else had held the interest but the Judge of the court! If the cause had been removed, he would have had time to have got his defence from Humble. Had he continued his appearance and his motion, Judge Hubbell could not have heard it or Graham's motion to amend; they *must* have gone with the cause to another circuit or awaited there the presence of *another* judge. In either case, Finch would have had time to prepare his defence. And let the fate of these motions have been what it might, Humble would have had the advantage of whatever defence he was able to set up against the note. But on the first intimation that the note is owned by the Judge upon the bench, Finch withdrew his defence, withdrew his motion, withdrew his appearance; and Mr. Graham took his judgment without opposition.—That is the philosophy of judges being suitors in their own courts before themselves. It is useless to dwell upon it. The bare statement shocks all sense of propriety.

The counsel for the defence say that this was merely using the machinery of the court. My answer is, that the court is prohibited from using its machinery where the judge has an interest in the cause. His interests ousts his jurisdiction. And let me tell them, that the history of that very cause, where the defence was withdrawn the moment the judge's interest appeared, is a grave vindication of the morality of the law in prohibiting a judge from sitting upon the bench where his interest is at stake in the smallest degree directly or indirectly. A defence in that cause would probably have been made, if it had not been for that very attitude of the judge. Graham *as* Graham, would never have obtained the judgment unopposed, which Graham as the judge took by default, when all opposition vanished before the judge's interest.

Again, they say that a consent is to be inferred for the defendant by the action of his counsel. In the first place, I have to say, that this occurred under the statute of 1848, which requires a consent in writing. I have to say, in the second place, that no consent can be possibly pretended. Finch swears that he gave no consent. And when he withdrew his appearance, no one but the defendant himself could consent. When the judgment was given, the defendant was not represented in the cause, and no consent could be inferred.

But let us go on. A judgment is taken. 'It is considered and adjudged by the Circuit Court of Milwaukee county, that Wallace Graham do recover and

so forth. But that is only an alias, a disguise of the real truth under false names. The Circuit Court is only an alias for Levi Hubbell, and Wallace Graham another alias for Levi Hubbell. The true reading of the judgment is, that it is considered and adjudged by Levi Hubbell that Levi Hubbell do recover and soforth. And that is what they call the machinery of the court. Levi Hubbell gave judgment for himself. Shame on such a scandalous and indecent proceeding. It was not a judgment against Humble, but an outlawry of his rights as a suitor.

Well, the judgment is entered up. Levi Hubbell, in the name of Graham, has a judgment given by himself against Humble. An execution is issued upon it, and levied on the house and lot of Humble. A sale takes place. Levi Hubbell is the purchaser; but again he hides behind another name. Graham steps out, and Henry P. Hubbell steps in. Another badge of fraud. The defendant was ashamed to act openly in his own name, and he purchased in the name of his nephew and I believe Clerk. A sheriff's certificate was made out to Henry P. Hubbell, really owned by this defendant.

In the mean time, there were other incumbrances on the house and lot. A man of the name of Miller held a mortgage on it, and he filed a bill in the Milwaukee Circuit Court to foreclose the mortgage. To this bill Downer, who held an incumbrance intermediate between the mortgage and the judgment, was made a defendant; and also, by some mistake, Graham, in whose name the judgment stood, instead of Henry P. Hubbell, the purchaser at the sale on the judgment. Whether the records did not show the satisfaction of the judgment and the sheriff's sale, or whether it was a mere mistake in drawing the bill, I do not know; nor is it of any moment here. Graham did not answer. A decree of foreclosure was drawn up providing for the sale of the premises, the payment of the mortgage, and of the lien of Downer, and the payment of the surplus into Court. The cause was heard before Judge Hubbell and the decree was made by him. And one of his counsel says, that in decreeing foreclosure of that mortgage, he utterly foreclosed his own interests; that he was decreeing against himself. The other counsel insists that the judge was entitled to the surplus arising from the foreclosure sale, and properly ordered it to be paid to Henry P. Hubbell for his own use. Those allegations do not quite tally. Without stopping here to argue either, I offset one against the other. A day or two after the decree, Judge Hubbell wakes up to his interests. He looks about him to see how he can secure his interests. He determines to do so, by becoming the purchaser at the judicial sale in his own court, which he would have judicially to confirm or set aside. He bargains with Downer to take his note, instead of cash for Downer's share in the proceeds of the sale. He attempts a negotiation with Finch & Lynde to give him time on the amount of the mortgage. They refuse, and he raises the money to pay the mortgagee. The sale takes place, and the property was bid in for him. But again he uses another name; Henry P. Hubbell is the nominal purchaser at the sale. Another badge of fraud. The cause comes again into court, upon the commissioner's report of sale. One of the gentlemen says, that it was unnecessary for the court to confirm the sale. I do not understand it so. I am inclined to think, that under the statute, confirmation is essential to the validity of the deed. But at all events, before confirmation, the mortgagor had a right, under proper circumstances, to have the sale vacated. Such a motion would have

been heard before the Judge, who was a purchaser. That is the rule of practice in this extraordinary proceeding. Well, the Judge becomes the purchaser, in the name of Henry P. Hubbell, at the sale of the commissioner appointed by himself, held under his own decree, reported back by the commissioner to him—the purchaser—to be confirmed or set aside as the nature and circumstances of the sale might in justice require! He thus purchases the property for some $1000, which he shortly after sold to Rice for $1300. The nominal purchaser was Henry P. Hubbell, not a party to the suit, not having any interest apparent in the pleadings, or provided for in the decree. And yet he has credit for the surplus. The Judge paid the amount due on the mortgage, and gave his note to Downer for that interest. There was a balance of some amount, I do not recollect how much, that remained unpaid to the commissioner. The young man, Wyman, who was the commissioner, became uneasy. He was liable to be called upon by Humble to pay the surplus arising from the sale. The Judge is spoken to about it. He says—"Well, I supposed you knew whom that surplus was going to." Downer advises that an application should be made in the name of Henry P. Hubbell to the court, for leave to draw the surplus monies and apply them on his lien on the mortgaged premises. And accordingly, Henry P. Hubbell, not a party to that cause, without any provision in the Decree for the payment of himself or of Graham in the premises, comes into court, and asks and obtains leave so to draw out and apply the surplus moneys. His application is heard and passed upon by Judge Hubbell. The money apparently belonged to Humble. But Levi Hubbell, in the name of Henry P. Hubbell, applies to Levi Hubbell for the money; and Levi Hubbell orders the money to be paid to Levi Hubbell by the name of Henry P. Hubbell.

I cannot stop to comment on the scandalous proceeding. I can conceive no plainer case of the violation of the statute, no plainer case of a judge adjudicating upon his own causes, his own interests, than is disclosed by the history of these two causes. A double mockery of judicial impartiality and judicial integrity!

I have hurried through these two specifications. I come now to the Taylor judgment. That will require more time and consideration. It appears in evidence, that Jonathan Taylor had a claim against the city of Milwaukee. And that prior to the organization of the State Government, he applied by his counsel, Judge Hubbell and some other gentleman, to the district court of Milwaukee county before Judge Miller, for a mandamus against the City. The application for a mandamus was not heard until after Wisconsin became a State, and was then heard by Judge Whiton. Judge Whiton refused a mandamus on the ground that Taylor had a perfect and adequate remedy by ordinary action at law. Thereupon a suit was commenced by him against the City, in the circuit court of Milwaukee county. Judge Hubbell, who had been counsel for the party on the subject, though never counsel in the cause, then iterpreting the Statute as I interpret it to-day, properly sent the cause to Racine county, in Judge Whiton's circuit. Finally a judgment was obtained there, in the winter of 1851, some time I believe in December, in favor of Taylor against the city of Milwaukee for $1,066,66. It seems that during the session of the Supreme Court that winter, Taylor wrote to Judge Hubbell to inquire about the result of his suit. Judge Hubbell immediately answered Taylor by a letter

produced here, dated in December, 1851, in which by some mistake he told Taylor that Judge Whiton had awarded a mandamus against the city. A few days later he wrote Taylor another letter, which I wish to read to the Court. There is a natural mistake in the date. It is proved and admitted to have been written in January, 1852.

"*Private.*

"MADISON, Jan. 8, 1852.

"MY DEAR SIR: I was mistaken in the form of the judgment which Judge Whiton was to pronounce: and his absence from Madison has prevented his deciding until yesterday.

"Last evening he sent to Racine a *judgment* in your favor for about $1060, against the City of Milwaukee. This is an ordinary judgment collectable in money; and you are not bound to take orders. It includes the amount of orders not issued and *delivered* to you, with interest from January 1847, according to the award.

"I would *suggest* to you that you should assign the judgment to Henry P. Hubbell or William Cook, for purposes of safety to yourself. And I have written to the clerk of the court at Racine, to send a transcript of judgment to H. P. Hubbell, with whom you will find it when it arrives. I hope when this judgment is collected, you will bear in mind my old account for services, (as I do not doubt you will.) I have been material service to you in making explanations to Judge Whiton at this place.

"In haste,

"Very truly yours,

"L. HUBBELL.

"Mr. JOHN TAYLOR,

"*Milwaukee.*"

Mark, here is the same Henry P. Hubbell, who was his alias in the Humble affair, and the same William Cook of the case of McGrath & Cook, to one of whom the Judge suggests to Taylor to assign his judgment, "for purposes of safety to himself." It is made a reproach against Taylor now, that he put his property out of his hands to avoid the creditors of Locke & Taylor. Some do so of themselves. Some do so ill advised by counsel. Taylor had done so under the advice of Hubbell when at the bar. Here he is advised to do it by a Judge upon the bench, in a letter written on the bench of the Supreme Court of the State of Wisconsin. Taylor acts upon the judicial suggestion. Upon that suggestion, and for no consideration, he executes an assignment of the judgment to Henry P. Hubbell, which however was never acted upon. Judge Hubbell returns from Madison to Milwaukee. He sees Taylor, and negotiates with him for the purchase of the judgment. He insists upon some discount, I forget how much. He insists upon the payment of $100 for his services—for making those explanations to Judge Whiton, which he boasts of in his letter in connection with his claim for services. It was following up the suggestion of the letter. I did not believe he had made any such suggestions, because I did not believe Judge Whiton would tolerate him. I asked Judge Whiton upon the stand, if any explanations, and what explanations had been made to him on the subject by Judge Hubbell. I know that Judge Whiton's answer must hang the defendant on one or other horn of a pretty dilemma.

Either he had falsely represented to Taylor that he had been of material service to him for the purpose of inducing Taylor to pay the $100, or he had been violating his duty as a Judge, by attempting to tamper in private with another Judge, for his old client. Judge Whiton's answer put him on the first horn of the dilemma, as I believed it would. Judge Hubbell had been trying to impose grossly on Taylor. Well, Taylor was poor and needed the proceeds of the judgment. He assented to the discount. He assented to allow the hundred dollars demanded of him. Hubbell purchased the judgment. Hubbell paid for the judgment with his own money, his own note and his own claim on Taylor. He thereupon drew an assignment of the judgment to Levi Blossom. It seems that the assignment was antedated. It is dated the 8th of January, when the defendant could not have been back from Madison before the 16th. Taylor executed the assignment to Blossom drawn by Hubbell, and here now apparent in his own hand writing. Taylor swears that there was no one present, except himself and Judge Hubbell, when the bargain was made, when the assignment was drawn and when he executed it. He swears to that uniformly. He swears to it before the production of the assignment, and after the production of the assignment. He never flinches from that statement, which I can see no object in his making, if it were untrue. When the assignment is produced here by Blossom, Henry P. Hubbell's name appears to it as a subscribing witness. I pronounce the name of Henry P. Hubbell, written as a subscribing witness upon that instrument, upon the face of the instrument itself, a manifest forgery. Taylor swears that no human being but himself and Levi Hubbell were present when the assignment was executed, and that he never saw it after he executed it. He swears that Henry P. Hubbell did not witness the execution, was not present at it. The Court will recollect with what great and suspicious reluctance Mr. Blossom entrusted that assignment of an old paid and extinguished judgment, to the keeping of this Court. The suspicion struck us the moment we saw the paper; but we gave no hint of our suspicion, no clue to it. We only asked of this paper, as of many others, that it might remain in Court. The witness was captious, sensitive and reluctant. The counsel admitted that it was in the defendant's handwriting, and offered us a copy which he said would answer all our purposes. We quietly insisted on that paper remaining, with others in evidence, with the Court til this trial was ended. But it was not until an honorable Senator got up in his place and said that the instrument was already in the keeping of the court and must abide the end of the cause, that a reluctant consent was obtained for it to remain. Then the counsel got up, and asked us what was our object in wishing to have the original. The question was pregnant with the suspicions of the counsel himself. We gave no answer to it. Then the counsel immediately turned to the witness, Blossom, and asked him the question, plump and plain, whether Henry P. Hubbell's name was subscribed to it as a witness when he got it? The counsel knew what I wanted with it. It struck him as it did me. Any lawyer, seeing the paper, would know why we wanted it here. Every member of this Court would know it. The counsel's question corroborates Taylor's oath and my argument. Here then is this assignment, written in the handwriting of Levi Hubbell, assigning the judgment to Levi Blossom. The body of the instrument and the attestation clause and the name of Taylor, are all written with the same ink; are all here in good, uniform, dark, black ink; and

then comes the pale name of Henry P. Hubbell, apparently written with vinegar. The whole body of this paper, every thing in it and about it, as Taylor swears he executed it in Judge Hubbell's office, and as he swears he last saw it; are all written in dark, glossy black ink, such as you find in lawyer's offices, in counting rooms and every where else, where the use of ink enters largely into the business of life. But the name of Henry P. Hubbell is written as if written with anything but ink; written, as if it had been written anywhere but in a lawyer's office, anywhere, except where ink is one of the staples of life; written, as if it had been written in some place where ink is rarely used, where ink is found faded and evaporated, almost as pale as vinegar. A subscribing witness would naturally use the same pen the same ink, with which the instrument was executed. I ask this Court to look at this paper even at this distance (Mr. Ryan held it up to the Court;) set the palpable contract and judge of the force of my argument. Judge of the plain truth and integrity of Jonathan Taylor's oath. I have seen as dark marks made with vinegar. It is not written with the ink to be found in a lawyer's office. It could never have been written in the defendant's office, where the assignment was drawn and executed with the ink you see upon its face. But if that instrument was not witnessed when it was executed, how comes the name to it now, as a subscribing witness? To contradict Taylor. To prepare the way for Henry P. Hubbell as a witness. To prepare the way for Henry P. Hubbell's presence when Taylor swears that he was not present, that he might contradict Taylor's statement. But Henry P. Hubbell is not here; to his own honor, not here. The attempt reacts. And this clumsy forgery of the presence of a witness, is a glorious, living illustration of the integrity of Jonathan Taylor's oath.

The hour of 6 o'clock P. M. having arrived, the Court adjourned to 8 o'clock this evening.

SATURDAY EVENING, July 9th.

The Court opened at 8 o'clock according to adjournment.

Senator HUNTER immediately arose and said:—Mr. President, I understand from several of the Managers that Mr. Ryan is completely exhausted, and that he feels it almost impossible for him to proceed in his argument this evening. I now move therefore that this Court adjourn till Monday morning next at 9 o'clock. Carried unanimously.

MORNING SESSION.

MONDAY, July 11, 1853.

Mr. RYAN resumed his argument.

Mr. President, I owe a warm acknowledgment to this Court for the kindness done me by the adjournment of Saturday evening. I also owe the Court an apology for having occupied their attention so long. I have myself felt throughout, that while any argument I could make would be far below the solemnity and importance of the occasion, the argument I have been able to submit on the part of the Assembly, in my exhausted condition, has been weaker and more tedious than such as I might be able to command, in a state of less physical and mental weariness.

It has been suggested to me since Saturday evening, Mr. President, that from some oversight in the hurry of argument, I omitted to comment upon the testimony on Specification 2 of Article 4, that Judge Hubbell sat as one of the Judges of the Supreme Court in the case of Hungerford and Cushing, after he had been retained by Hungerford upon the indictment. I do not remember how that was. I think it very likely I may have made the omission. I have been unable to read over this testimony at length since it was taken, and have trusted to my memory, together with occasional references to the printed testimony. And on Saturday, in speaking almost wholly without notes, in a state of great weariness arising from the protracted labors of this trial, I think I must have omitted to notice many things importatant to the consideration of this case. For all such omissions, I confide in the memory, reflection and judgment of the members of the Court. And I presume that I did make the oversight suggested to me. Be it as it may, I hardly conceive it necessary now to dwell upon the enormity of the fact. The Court must recollect the testimony well.—After the final decree in the circuit court of Dane County; after the retainer upon the indictment; after the opinion given upon it; after the receipt of the fee so unblushingly admitted here; when the cause came to the Supreme Court, the Judge of the second judicial circuit, with that connection, with that retainer, with the proceeds of it about him, intruded amongst the Judges of the Supreme Court, and sat in solemn mockery of justice, on a cause involving as they say $100,000 or $150,000. I am not going to comment upon the questions arising on the indictment. I deem them immaterial here. Whatever they were, his retainer was no less a retainer. Whatever they were, he was no less the feed counsel of Hungerford on the subject matter of the indictment. At the bar, he could not honorably have taken a retainer against Hungerford in the civil suit. Yet as Judge, he sat in judgment upon the cause. I am not now, when I have passed the subject, going to dwell on the enormous indecency, the monstrous wrong, of his sitting in that cause. All argument pales before the monstrous iniquity of the simple fact. I take the fact as I find it here in proof. I am not going to dwell upon what I know out of the proof, of the defendant's conduct.—But as the defendant has seen fit to introduce my name in connection with his retainer on the indictment—as my name, utterly irrelevant to the merits of this case, has been studiously drawn in upon every possible occasion and in every possible way—I take leave here to make a statement as a personal explanation. I was retained by Hungerford on the indictment and argued the motion to quash it. That was my entire connection with the case. I never was instructed on the facts by Hungerford. I acted merely on the legal questions arising on the face of the indictment. I was never retained in the civil suit. But, having had in effect precisely the same connection with the indictment which the defendant here confesses, I could not take a retainer against Hungerford in the civil suit. I felt myself bound as an honorable lawyer, twice to refuse retainers upon the other side of the civil suit. A retainer was offered to me by Judge Crawford for some of the defendant's in the Chancery suit, soon after the indictment was disposed of, which I refused. A retainer has since been offered to me by an eminent lawyer of Massachusetts, as administrator of Mr. Rantoul, one of the original defendants, now dead. I again refused it. It was a large sacrifice of pecuniary interest, which I could ill afford; but it was my duty and no more than my duty. I conceived that

my connection with the indictment, estopped me in honor and professional morality, from an adverse retainer in the civil suit, although I was never retained by Hungerford in it. But though I could not be counsel against Hungerford, the defendant could be Judge against Cushing. So much to supply omissions on that Specification.

Mr. President, when the Court adjourned Saturday afternoon, I had begun to comment upon the proofs given to the first Specification of the second Article. I had traced the recovery of the judgment by Jonathan Taylor; I had traced the coquetting of the Defendant with the judgment from the time it was rendered till it was assigned to Levi Blossom. I had traced the purchase of it by the defendant, and his payment for it in his own money and his own note. I had traced the assignment of it made between him and Taylor alone, to Levi Blossom, who for all that we know, knew nothing of the existence of the judgment at that time. Taylor certainly swears that he had never negotiated with Blossom, never spoken to Blossom, never seen Blossom, on the subject of that judgment, when he sold it to Hubbell, and at Hubbell's request assigned it to Blossom. I had commented upon what struck me upon the face of that assignment, and upon what appeared to have struck the counsel upon the other side, as well as myself, as a forgery. And there I was stopped by the adjournment.

When the witness, Jonathan Taylor, was last upon the stand, an attempt was made to puzzle him, as to whether this assignment was not a copy of the prior assignment made to Henry P. Hubbell. It could not be literally a copy, because the names of the assignees are different. I cannot tell and I do not care, whether it is in other respects a copy of the previous assignment. It may have been copied, drawn, dated and all, as the question was put to the witness. It may be that the assignment to Henry P. Hubbell was dated the eighth of January, and that this assignment being subsequently made, the date of this was copied from the other. That is wholly immaterial. But the witness was not puzzled by the singular questions, so singularly put to him by the defendant. He stood up to all the brow-beating, and stated honestly and fairly upon the stand, what is exceedingly probable in itself. He stated that the prior assignment executed to Henry P. Hubbell was executed upon the mere suggestion of the letter of this defendant, was without consideration, was made as a mere form, intended to have, as between the parties, no force or validity. He testified that the defendant, when he had purchased the judgment, and taken the assignment to Blossom, told him that the prior assignment would go for nothing, and that it should be returned to him.

And, by the way, speaking of the prior assignment to H. P. Hubbell, it is said here that it was made in fraud of the creditors of Taylor and Locke; and that Taylor's testimony is to be distrusted because he had done such an act. Let us see whom that argument hits. Taylor had long been the defendant's client. Taylor seems to have put the most unbounded confidence in the defendant, and in the defendant's advice. When Judge Hubbell was at the bar, Taylor's legal adviser; Taylor under his advice had over and over again mortgaged his property to him, for the same object. After Judge Hubbell went upon the bench, Taylor continued to mortgage to others for the same object, under his advice. That is the testimony of Taylor, confirmed by the unpaid mortgages produced here. And, Mr. President, if it was wrong for an ignorant layman to do that, what was it for Judge Hubbell, sitting upon the bench of justice, to give his

written advice to that ignorant and trusting layman to do it? To suggest it judicially to him, before a thought of it entered the mind of the client? If it is a reproach to Taylor, what is it to him who makes the reproach? If even an ordinary layman, knowing little about the law or the moralities of the law, is to be held to this rigid measure of accountability before the world: by what rule, sir, should we hold the judiciary, appointed to teach and administer the law and its moralities to the people? And when the counsel of Judge Hubbell here in this Court, assails Taylor's character because he did make that assignment and did execute those mortgages to defeat the creditors of Locke & Taylor, what shall we say of him who sitting upon the bench, the exponent and living representative of law and judgment, advised that very course against the law and its morality, to his ignorant and trusting client? Spontaneously advised it? Aye, advised it apparently with a view to his own ultimate benefit! With what grace does the reproach come from him who suggested it? With what grace from the learned Judge, who gratuitously tempted the ignorant layman to do it? Shall Satan tempt us and reproach us with our sin?

And the defendant seems to expect that he can impair Taylor's testimony by his own naked assertion, his own unsupported pretence, that he did in fact copy the second assignment from the first. Suppose that assertion to be true. Taylor testifies that he made the bargain in Judge Hubbell's office, and that Judge Hubbell, sitting at his desk, wrote the assignment to Blossom. He cannot tell whether Hubbell copied it, or from what he copied it. He can only say that he did not know it was copied. He said that the first assignment was not there: he did not see it there, and he tells you that he judges it was not there, because the defendant told him that it was not there. But he cannot say that it was not amongst Hubbell's papers, or on Hubbell's desk. He only knows that he did not see it, and that Hubbell told him that it was not there, but that he would get it and surrender it to him. It may be it was there. It may be that the defendant told the witness that it was not there, but that it should be returned to him in a few days, when all the while he had it before him upon his desk, copying the second assignment from it. That may all be. It may be that even at that early day, he foresaw the subsequent proceedings, and did not know which stalking-horse he should saddle the judgment upon, which judicial mask he should wear upon his own face; that he had not determined whether he would prosecute the judgment in his own court, before himself, in the name of Henry P. Hubbell or of Levi Blossom. It may be that therefore he chose to retain both assignments. And if so, it is but an additional confirmation of the witness Taylor. If the defendant's assertion be true, that he had the assignment then before him and copied from it, when he told Taylor it was not there, it is but an additional evidence of the character given to the man by the weight of the whole body of evidence in this trial.

You have the solemn oath of Taylor, uncontradicted and unassailed, that the assignment to Henry P. Hubbell was a mere form, never acted on or intended to be acted on. You have his solemn oath that the assignment made, upon Judge Hubbell's purchase of the judgment to Blossom, was the first and only actual sale of the judgment. Why, then, has so much been said here of the prior assignment? Why has so much assault upon the witness and upon the cause, been based upon an irrelevant paper, and an irrelevant fact? The purpose is plain enough, it was for the purpose of connecting Henry P. Hubbell with the

sale of the judgment by Taylor. For the purpose of preparing the way for Henry P. Hubbell to cast the weight of his oath against Taylor's. For the purpose of giving color to the story told us here by Levi Blossom. A draft was evidently made on the oath of Henry P. Hubbell. Henry P. Hubbell was evidently destined to be a colleague here of Levi Blossom. The ground of his labors was evidently staked out for him. He was to be linked in with the purchase from Taylor. He was to be present at the actual sale by Taylor. He was to aid in breaking down the force of Taylor's evidence. When the assignment is produced by Blossom, Henry P. Hubbell's name is to it, in contradiction to Taylor's oath, as a subscribing witness. I have commented on that and shall not repeat here the evidence of fraud in it. But the whole plan of yoking Henry P. Hubbell with Levi Blossom here, is palpable. That is the reason why his name appears as subscribing witness to the assignment of Blossom. That is the reason why the prior assignment to himself played so prominent a part in the cross-examination of Taylor; in the attack upon Taylor. Where, then, is Henry P. Hubbell? Or rather, first, where is the assignment to Henry P. Hubbell? If there is anything in it or about it to contradict Taylor, why do they not produce it? Remember that Taylor never received it back. Why is not here? Why is not Henry P. Hubbell here? Henry P. Hubbell's partner in New York came here as a witness for the defendant. Kane is his partner. Kane's name and Henry P. Hubbell's name are both in the defendant's subpœnas. Kane says they were telegraphed to come here. Kane came and said here that he and Henry P. Hubbell could not conveniently leave their store together. That was the reason Henry P. Hubbell was not here *then*, to vindicate his uncle by his evidence. Kane was examined over ten days ago. Kane went home. But Henry P. Hubbell has not come. Since Kane went, since the counsel saw our suspicions of this fraud, Henry P. Hubbell has had time to come and to be examined and to be at home again. Why is he not here to prove his attestation of the assignment? Why is he not here for more significant and important purposes, even, than that? If Blossom's story be the truth, if there be any truth in Blossom's story, Henry P. Hubbell is a living witness to it, bound by the ties of kindred, bound by the obligations of truth and justice, to be here upon the stand a witness to it. You know in these proofs that he is the defendant's nephew. You know that he was for some time a sort of confidential clerk in the defendant's office, a youth growing up into manhood under the defendant's eye and care. The defendant seems to have been in some sort his guardian, perhaps his nearest living relative. Henry P. Hubbell owes the truth to the defendant by a thousand obligations. Why have we paltry excuses here, instead of the witness on the stand? Why is he not here? Is conscience stronger with him than his blood? If the theory of this defence be true, he owes it to his blood, to his own honor, to the holiest obligations of justice, to be here as witness to it. There is no oversight in his absence. They knew the consequence of his presence in season to have had him here; they called him here, but he has not come. I tell you, Mr. President, that his absence is a significant, pregnant and important fact. That young man—I know little of him—honorable by all reports which have reached my ears in answer to my inquiries since I have been trying this cause, has probably best served his friend, his uncle, by his absence. I believe it. I believe that he could not serve the defendant by the truth, and that he would not serve him by falsehood. His absence

may be a credit to himself, Mr. President, but it is none to the defendant who called him here. His absence is the reluctant evidence of the defendant's own kindred, to the falsehood and fraud of this defence.

There I may safely leave, at least for the present, Henry P. Hubbell and the assignment to him. I return to the real assignment, the assignment to Blossom. You have the solemn oath of Taylor, that he bargained for the sale of the judgment with Levi Hubbell alone. You have the undisputed fact that Levi Hubbell alone paid for it, with his own money only. You have the solemn oath of Taylor, that he and Levi Hubbell only were present at the assignment. You have no evidence against it. If that oath of Taylor be false, it was false without a motive. If it be false, it was false with the knowledge that Levi Hubbell and whoever else was present, were witnesses to its falsehood. If false, it assumed the guilt and penalties of perjury, without a motive. You have it given here twice with firmness and consistency, once before and once after the production of the assignment here. And you have it given with the assurance and ingenuousness of truth.—Taylor is no shirking or quibbling witness. He was pressed hard upon his cross-examination; but he looked to his memory for his evidence, and testified with open truth; he shrank from disclosing none of his weaknesses, but spoke all out upon the stand, with the simplicity of truth. You have his solemn oath that the sale and the assignment were between him and the defendant only, with no other human presence. And that stands here utterly uncontradicted. You have his solemn oath, uncontradicted here, that he sold to Levi Hubbell and to him only. You have his solemn oath, uncontradicted here, that he was paid by Levi Hubbell and by him only. You have these facts confirmed by the defendant's own letter produced here, in which he promised to pay Taylor the note he had given for the largest part of the consideration of the assignment, out of the proceeds of that very judgment. You have the solemn oath of Taylor, that prior to the assignment, he never negotiated with Blossom on the subject, never saw him on the subject. You have his solemn oath that he did not know Blossom in the sale or assignment of the judgment. The fact, then, stands here uncontradicted, after all their assaults upon it, in strong corroboration of Taylor's whole testimony. The fact stands here beyond the reach of contradiction, that Levi Hubbell and Levi Hubbell only, was the purchaser of the judgment.

Let me pause to notice here, a singular notion. The defendant's counsel says that there was an estoppel there upon Judge Hubbell. He says that Hubbell having taken the assignment to Blossom, was estopped in law from denying Blossom's ownership of the judgment. A pretty quillet, that. Does not the gentleman know that no fraud is without its estoppel in law?—Does not the gentleman know that every assignment and conveyance executed in fraud works an estoppel on the grantor or assignor? Does not the gentleman know that "the covine doth suffocate the right?" Does the estopple extinguish the fraud, of which it is the consequence? To what end say here, that there was an estopple? If Judge Hubbell was practising a fraud upon his office and his court, is it mitigated by the fact that he put it in Blossom's power to practise a fraud upon himself? Does not the gentleman know that all such pretty transactions as this, are carried on in faith of an old proverb, in faith of "honor among thieves?"

To resume. We have the fact, beyond all contradiction, that Levi Hubbell

was the sole purchaser of the judgment, with his own means and in his own behalf. Whatever may have happened afterwards, when this assignment was executed he alone was interested in the purchase. Whatever may have happened afterwards, when this assignment was executed, the name of Levi Blossom, as assignee, was a mere mask. Hubbell was the real assignee. Blossom was his double. The real being hid behind the mask of Levi Blossom's name, was Levi Hubbell. If Taylor is reproached for having, by Levi Hubbell's advice, hidden his little property behind the mask of Levi Hubbell and the mask of Henry P. Hubbell; if such masks are denounced here with moral zeal in the name of Levi Hubbell; I ask why Levi Hubbell, in the purchase of that judgment, resorted himself to a mask? What interest had he to hide his purchase behind the broad screen of Levi Blossom's name? The purchase itself was an honest purchase. There was no reproach in the property he took in the judgment.—If he bought it with an honest intent, intending to deal honestly with it, why not honestly and openly take the assignment in his own name? I can see a judicial delicacy in the suggestion to Taylor to make the prior assignment, without consideration, to Henry P. Hubbell or Wm. Cook. Taylor tells us that he made all his mortgages to Levi Hubbell before he became a judge; but afterwards, for the sake of judicial decency, the Judge advised him to make them to his nephew, Henry. So when this assignment was meant for a cover, he suggested the name of his nephew and his tool. But when it became an actual purchase, when there was no fraud, and when a new assignment was taken, why not name the actual purchaser, not a mask? The assignment did not proceed upon the old one. It did not come from Henry P. Hubbell. It came from Taylor. Why not name in it the real vendee, as well as the real vendor? Why lurk behind a mask? Mr. President, TRUTH walks erect, JUSTICE walks openly, HONESTY walks naked over this earth of ours. They wear no masks. What is it, sir, that wears a mask? What is it, sir, that stalks about draperied in obscurity? What is it that dare not look the world in the face, but hides its face behind a mask? FRAUD, sir, FRAUD!

And mark it well, Mr. President, here in the very beginning is a very badge of fraud. Here in the very beginning, before Blossom becomes a party, is a badge of fraud, putting men to suspicion of some contemplated wrong. You cannot consider the subsequent dealings with this judgment rightly or intelligently, without considering all the antecedents, without considering this badge of premonitory fraud. In the very purchase and assignment of the judgment there was a badge of fraud, not accounted for by the purchase, but to be accounted for only by the subsequent uses of the mask, behind which the real purchaser skulked.—Mark that well; it will be of infinite significance hereafter. By the law of the land, that secrecy, that hiding, is one of the known and settled badges and evidences of fraud. Mr. President, it was the seed of fraud. We shall see it grow and ripen and bring forth the fruit of fraud.

Taylor testifies that to the end of these transactions, no word ever passed between Blossom and him on the subject, except the single conversation in Hubbell's office. Blossom says that before he took the assignment of Taylor from Henry P. Hubbell, he asked Taylor whether there was any defence to the judgment. Which speaks the truth? Blossom is a shrewd, able, cautious business man, not unlikely to be suspicious and distrustful. Would he put that question to Taylor? He was to take an assignment of Taylor. His title

was to come from Taylor. Taylor was the last man to ask that question of. Taylor was his virtual vendor. Taylor had received a part and was to receive the balance of the price, for which he had sold the judgment. If there were an offset or defence to the judgment, it would have been Taylor's interest to deceive him. Blossom is too shrewd and cautious to have relied on Taylor's word about it. If Blossom were dealing with that judgment as a purchaser, Taylor is the last man he would have asked. He would have asked Judge Hubbell rather. If he were purchasing from any of them, paying his money for the judgment, Blossom would have known that the city of Milwaukee should answer that question, not Taylor. The city would have an interest in disclosing. Taylor an interest in concealing, any defence or offset to the judgment. And if Blossom were pursuing a bargain in the purchase of that judgment, and providing against loss or disappointment, with his business shrewdness and tact, he would have made the inquiry at the office of the Common Council, not of Taylor. He tells you he inquired of Taylor. It would not do to say he inquired of the city. In the one case he contradicts our witness; in the other, he would subject himself to contradiction. Judge between Blossom and Taylor, which tells what is probable here, which tells what is utterly improbable. But mark this. Blossom does not pretend that he ever spoke with Taylor before the assignment to him. Blossom does not pretend that he was the purchaser then. You have then this starting point. You have this point of view, to see Blossom's story. You approach his testimony with this solid fact to stand on—when this assignment to Levi Hubbell was executed, he had nothing to do with it. The judgment was bought and paid for by Levi Hubbell. And the assignment of it to Levi Blossom was an assignment, in fact, to Levi Hubbell. Let us now see how that trust is divested. How the judgment becomes the property of Blossom. How the mask becomes the man. It is a feat of legerdemain worth studying. I think we can detect the real *modus operandi*. Taylor tells it to you. Taylor frankly, openly and boldly swears before you, to the subsequent conversation between Blossom, the defendant and himself. If Taylor has there sworn falsely, he has deliberately exposed himself upon the testimony of two witnesses, to an indictment for perjury.

Judge HUBBELL. He may be subjected to it yet.

Mr. RYAN. Well, we will see the result. Taylor came upon the stand; and, knowing something of this defence, its character and its power, if he swears falsely here, he deliberately and wantonly exposed himself to conviction for perjury. If he were a false witness, designing falsely to prejudice this defendant, it would have answered his purpose to say that his conversation was with Levi Hubbell alone. He would have served his false purposes, then, without risk. Blossom could not then have contradicted him. But Taylor is no false, cunning witness to fabricate safe falsehoods. He testifies openly from his memory, to the fact as it happened, before two witnesses; and exposed himself to what is here threatened upon him, an indictment for perjury, by the oath of the defendant and the defendant's witness. If he has been playing with the truth here, tampering with his oath here, he might have sworn with the same effect, that he had separate conversations of the same purport with Blossom alone and with Hubbell alone. But he risks all the consequences of the truth, and tells you that they were both there, and that one of them in the presence of the other, made the guilty, damning remark. It is inconceivable that this

evidence should be false. We shall see that it is strongly corroborated by all the known truth of the case. Taylor tells you that shortly after he executed the assignment to Blossom, he went into Hubbell's room, and found Hubbell and Blossom conversing about the judgment. Blossom reported to Hubbell the claim against himself which the city insisted upon setting off against the judgment, and suggested that therefore the judgment had better be assigned to some one else. Strong in his judicial position to force the city, Hubbell declined, and abided by the assignment to Blossom. He then suggested the creditor's bill in Blossom's name. That is the key to the pretended extinguishment of Blossom's trust. We shall see that it is the true one.

The apparent title of the judgment was in Blossom. For the very reasons that the assignment was taken in Blossom's name to cloak the ownership of the defendant, for the very reasons that Blossom's name was subsequently used in the creditor's bill, it was essential to deal with the city in the name of Blossom. The mask would have been useless, had it been once withdrawn. So, when the judgment was bought, Blossom figured with the city in his part as owner of it. An application for payment is made in the name of Blossom to the city. Blossom duns the city. That is to say, Hubbell behind the mask of Blossom's name, demands of the city of Milwaukee to pay the judgment. And mark this. The city was accustomed to pay its debts in orders. Blossom would receive money, and money only, for the judgment. They introduce Col. Walker to show that the city was in debt and had no money. That proves the expectation of receiving money, a singular and sanguine expectation. It was out of the order of business. It was beyond the probabilities of good fortune. Where did that hope arise? Whence did that suggestion come? It came from Levi Hubbell. Before Blossom pretends to have had an interest in the judgment, before Hubbell himself had bought it, when he was only preparing the way to buy it by getting it assigned to his nephew, that idea occurs to him. He writes to Taylor that the judgment is collectable in money and that he is not bound to take orders. Blossom, then, in urging the hopeless claim of money and only money, was acting on Hubbell's views, carrying out Hubbell's suggestion. You hear the same voice from behind the mask, which prompted Taylor. Well, the city was in a bad case to pay a thousand dollars cash. And the officers of the city seem to have been rejoiced that this judgment of over $1000 had passed into the hands of one of the city's own debtors. Between Taylor and the city, it would have been a difficult matter of payment; between Blossom and the city, it was an easy matter of set-off. Blossom owed the city taxes to a greater amount. And so the city council say to him, "Mr. Blossom, between you and us this is a matter of offset. We owe you the judgment and you owe us taxes. We will set off your taxes against the judgment." It strikes me as a very fair and honest proposition, that the man who owed the city a large tax list, should allow his judgment against the city to apply in liquidation upon his tax. And so Blossom would probably have thought, had Blossom been Blossom and not Hubbell. Here Taylor's evidence dove tails exactly, as truth always does. Taylor tells you what I do not think his mind could have devised out of nothing. He is honest and simple enough to tell just what he knows, his is no cunning brain to invent shrewd and skilful falsehood. He tells you that he met the tribe of Levi in council, and that Levi, the mask, suggested to Levi, the man, that in order to avoid this unexpected move of the city, the judgment had better be assigned

to somebody else; somebody, I suppose, against whom the city could make no offset. But Levi, the man, knew his game better than his shadow; he knew that money could only be forced, not coaxed, out of the city. He said that would make no difference. He then suggested the creditor's bill to be filed before himself, to lock up the city treasury. This is confirmed by all the known truth in this matter.

The bill is filed. An injunction is allowed by the Court Commissioner, and a motion is made by the city to dissolve the injunction. I am not going to argue the motion here. I will simply remark that I have no doubt that motion was well taken. The city of Milwaukee is a municipal corporation, part of the machinery of government; part of the machinery by which the sovereignty of the State acts. It collects not only its own taxes, but also the State tax levied on the property within its limits. It is by a law a trustee of several specific and dedicated funds. It administers not only its own funds, it administers the school fund. And I deny utterly that a municipal corporation, part of the political machinery of government, collecting taxes imposed by the State for the general expenses of the State; imposing, collecting and administering taxes for the political and municipal government of its inhabitants; collecting and ministering the holiest fund among them all, the school fund, is to be enjoined and tied up, in all its pecuniary functions, like a shirking debtor who hides his means from the payment of his debt. Remember that this injunction enjoined every fund administered by that city. It covered the State taxes, the city taxes. It covered the school fund. It covered every special fund to be administered under the charter of the city. It was an outrage in fact and law.

But it is argued here that the Judge's conduct upon that motion, in modifying the injunction, is evidence that he was not the owner of the judgment. They contend that the modification was against the interest of the owner of the judgment; that if he owned the judgment, he was acting against his interest; and that therefore we are not to believe that he did own it. Not a complimentary argument, Mr. President. But is the fact so? Was the modification against the interest of the judgment creditor? No, sir, the judge was acting for his own interest; directly for it. And so the city authorities understood it. The injunction had before restrained the city in effect from collecting its taxes. The modification was to allow them to collect, but the injunction continued to restrain them from disbursing. The city had already assumed the responsibility of so far modifying the injunction for itself. I will read the resolution of the City Council: "Resolved, That the City Attorney be directed to take immediate steps to have the injunction issued in the case of Levi Blossom against the city dissolved; and that, in the mean time, the city treasurer be directed to prosecute the duties of his office as usual, with the exception that he make no disbursement in cash until further ordered." The city applied, not for this modification, but for an absolute dissolution of the injunction. But the city would not await the dissolution for one purpose. They direct the treasurer to go on, in defiance of the injunction, to collect the taxes. The truth was this—that the injunction, as it was issued, was against the interest of all parties. It enjoined the city from collecting its revenues, and that was equally against the interest of the city and its creditor. And there you see how much more judgment there is in the head than in the mask. There you see how far better and more keenly Levi Hubbell understood the interests of the cause than Levi Blos-

sum does. Levi Blossom professes here that he was offended with the Judge, that he was outraged by the modification of the injunction, which—if he had been the real man—was directly and palpably for his interest. Levi Hubbell understood it better. He knew well that it was the interest of the creditor of the city, of every creditor of the city, as well as of the city itself to collect the tax. The true interest of the creditor on the injunction was to keep the fund in the treasury when collected—to enjoin the city from disbursing it, until the judgment should be paid. But it was against the interest of all parties to tie up the hands of the city from collecting her revenues.

Judge HUBBELL. Don't the gentleman admit that the city of Milwaukee had a large amount of outstanding orders that were receivable for taxes, and in which the tax was always paid?

Mr. RYAN. I have no recollection of any such testimony. Nor do I understand such to be the fact. The testimony of the witnesses, as I understand it, is that a certain portion of the tax was always payable in money, and a certain other portion was *payable* in orders; not that it was *always paid* in orders. But be that as it may, it was the interest of the city, it was the interest of every creditor of the city, that the tax in any shape, orders or cash, should be collected. For if the collection of the tax should be interrupted and prevented, be it payable in whatever funds, the city of Milwaukee would be so much the poorer, to her own loss and to the detriment of all her creditors. And if it be true that Levi Blossom was *then* offended and outraged by the modification, as he *now* professes, it only proves that Levi Blossom felt too little interest in the matter to understand the real interest of the claim, nominally his; but that Levi Hubbell felt an interest in it which taught him the true interest of the judgment. He did not regard it as Blossom well might after his fuss with the city about about the offset of his unpaid taxes, as a question of mortified vanity. It was a solid business interest to him; and he understood his interest too well to refuse to allow the city to proceed and collect the tax; for when collected it would remain in the treasury under the injunction. It was there for the city and for the creditors to quarrel over.

Judge HUBBELL. Don't you know when the city received orders they were cancelled? Are you so unadvised in regard to the collection of taxes in the city of Milwaukee, as not to know that when they received a man's payment of his tax in their own orders, they were immediately cancelled?

Mr. RYAN. I am not testifying here. I am commenting upon the testimony of the witnesses; and once for all, if their testimony bears hard upon you, appeal to them and not to me. I say again—and I try to satisfy this Court, as I have tried in some other Courts in vain to satisfy them of a reasonable, plain, self-evident proposition—that whether orders received for taxes were cancelled the moment they came in or not, the collection of the tax made the city so much better off, increased so much the ability of the city to pay its debts. If orders came in and were cancelled, the city had expunged so much of its debt and was so much better able to pay its remaining creditors. If the tax came in partly in money, as the witnesses say and I think the charter would show, then it would have a cash fund subject to the injunction. There were certain taxes which were payable not in city orders at all, but in money alone. This injunction locked up the whole. If the State had been awaiting, if the legislature in this Capitol had been awaiting the payment of the State tax from the city of Milwaukee, there

was an injunction in favor of a private citizen, locking up so much of the State tax as was due from the city of Milwaukee. The State of Wisconsin could not collect its tax in that city, because Levi Blossom had interdicted the revenue of the State. I have, then, shown that if Levi Blossom was angry as he says he was; if, as he says he did, he swore in his anger a solemn oath which tied his conscience after; he only shows that he, the keen, astute, able, practised man of business, understood nothing whatever of the interests which he professes were his own. A rare failing of Levi Blossom, not to understand his own interest. Levi Hubbell understood it.

The Judge modified the injunction as I have stated, and refused to dissolve it or otherwise to change it. The city treasury was closed. Not only the monies of the city itself, the tax of the city itself, but all the funds which the city by law collects or administers, were tied up. Mr. Randall, who was counsel for the city, tells you that believing the city had a good defence against the injunction and against the bill, he advised the city to compromise, in order to relieve itself from the incubus of the injunction. The judgment, rendered in January, was for $1066,66 besides some trifling amount of costs. In February, the city acting on Randall's advice, agreed to pay in liquidation of the judgment, its bond for $1200, which was worth and sold for par. The judgment bore interest at 7 per cent. The city proposed to pay, and did eventually pay a bonus or interest of some 35 or 40, perhaps 50 per cent. per annum, *in order* to free itself from the ruin of this injunction; to be rid of an injunction, which the counsel gravely tells us, had been modified to suit them! Literally, they issued an order to pay the judgment, and the bond to pay the order. That was necessary to be within the Statute which authorized the city to fund its orders. But is was all done upon the understanding that the city was to pay the judgment with the bond; the order was only a machinery used to legalize the bond. The bond is finally issued. Does Blossom receive it? No, sir. Who receives it? Henry P. Hubbell. Who sells it? Levi Hubbell. Who receives the money for it? Levi Hubbell. Does it merely pass through his hands to Blossom, or does he receive it as his own? It is passed to his credit in the Bank and checked by him, from time to time, in the exigencies of his business.

There is a plain, clear, consistent history proved and bound together by every particle of record evidence that exists in relation to it. The counsel on the other side resisted the proof all the way through. They knew where the truth would leave them. They battled against the evidence, step by step. They battled even against the identity of the bond received and sold by the defendant himself. The counsel must have known—the defendant certainly did know, that it was the identical bond. But with the insincerity of the whole defence, they resisted the proof. They thought that I could not read the bond, after it had been mutilated when cancelled. The gentlemen got their heads together over the bond, scrutinized it and exultingly declared that I could not read it, as a bond of $1200. They said it was so mutilated, as to prevent its being identified. They said that it was so mutilated, as to destroy its identity. The Court will recollect the glee with which they handed the bond back to me, saying that I could not identify it or even read it as a bond of $1200. All this while they must have known it. the defendant himself did know it for the identical bond he had sold to Mitchell. Well, I tried. I showed the remnant of the figures "1200" in the corner of the bond. I showed the "ve" before the words "hundred dollars"

in the body of the bond. I ventured a surmise that no numeral ended in "ve" except twelve. Mitchell swore that he had had no other bond of the city of $1200, and that he believed this bond to be the bond he had bought from the defendant. The bond was identified against all their cavils and exultation. And when it is identified and proved beyond cavil, they own up that it is the true and actual bond sold by the defendant. When they think we cannot prove the truth they defy us to prove it. When we have proved it beyond controversy, Oh! they say, of course that is the truth, and boast of their sincerity. Their notions of sincerity remind me of a story, better told than I can tell it, by an astute and humorous old friend of mine. A worthy brother of a worthy congregation, was brought before a church meeting charged, to use a term fashionable in this defence, with the indiscretion of being a drunkard. He however had forgotten all about it, and denied ever having been drunk to his recollection or belief. One of his brethren got up and said; "Don't you remember, brother, so and so, that at such a time you fell from your horse drunk, and I helped you up again?" "Oh—ah—yes, now you have called my mind to it, I do remember it, but that is the only time I can remember." Then another brother got up and spoke; "Brother, so and so, don't you recollect the time I found you lying drunk on the road under the lee of the fence, and had to help you home?" "Oh—well—yes, that had escaped me; I think I do remember something of the sort now you have mentioned it; but cannot remember any other time." Other brothers got up and called his attention to similar circumstances, all of which he recollected, acknowledged and asked pardon for. Finally, the worthy pastor of the church got up and said; Brother so and so, as you have confessed so many failings, might you not just as well own up the whole charge at once and make due acknowledgment and atonement?" "No, sir," answered brother so and so, "I will own up just as fast as you prove and no faster." So in this case, after all this zeal in resisting proof of the bond, when we proved it, they are like brother so and so; "Oh the bond was all right. To be sure we received it, sold it and spent it; but we came honestly by it."

That, Mr. President, was the case before the Committee of the Assembly. That was the case, on which the Assembly founded this Specification. That is the case established here beyond the reach of denial. The defendant bought the judgment from Taylor; paid Taylor for it; and took an assignment to Blossom, without interest or privity in Blossom. Upon that assignment, a bill was filed in Blossom's name, in the defendant's court, and the defendant so adjudicated upon it, as to induce the City to get rid of it by giving a bond for the amount of the judgment and a bonus for their peace. That bond was received by the defendant's nephew, Henry Hubbell, and sold to Mitchell by the defendant, and the proceeds were used and spent by him. A plain, cogent, palpable case. Not resting on Taylor's testimony; proved step by step by the records, which cannot lie. Taylor's evidence tallies—step by step, item by item—with the record. The record tallies, dovetails—item by item, step by step—with Taylor's oath. They each disclose a clear, selfevident, selfsustaining case of monstrous judicial turpitude.

And how do they face that case? How do they attempt to shelter the defendant from the crushing weight of that case?—How escape from the proof that he and he alone bought the judgment, that he and he alone received the proceeds of the judgment? What oath is cast into the scales against the ever-

whelming weight of this evidence? It is a bold hazard for any oath. Henry P. Hubbell is honorably absent.—Who lifts the gauntlet of truth? Who risks his oath against a case so minutely, so conclusively proven? Levi Blossom. Levi Blossom is a bold man. Whatever fraud was in that case, he was a party to it. If Levi Hubbell was guilty of hiding behind a mask, Levi Blossom was the guilty mask. If there was a fraud, he was not only a party to the fraud, he was a sworn party to it. In the creditor's bill he had sworn that he was the owner of the judgment by assignment from Taylor. The proof of our case had therefore borne down not only upon the defendant, but upon Blossom. It was a bold step to face that proof. But that is not all. Knowing his connection with the case, when he did not know our proofs, the Committee of the Assembly took the precaution to examine him. Among other witnesses examined upon this subject before the Committee, was Levi Blossom. Our case had not then been disclosed to the world. The world and Mr. Blossom were ignorant how much or how little we knew of it. The world and Mr. Blossom were ignorant what proofs remained or were within our reach, of the truth of this case. Mr. Blossom gave his deposition and signed it. Mr. Blossom gave such account as he then had to give of these transactions. It has been proved and read here. I will take the liberty of reading it again. I will read to the Court all of his deposition on this subject.

"I had an assignment of a judgment in favor of Jonathan Taylor vs. the city of Milwaukee. My impression is that I had said assignment of Henry P. Hubbell. A creditor's bill was filed against the city for the collection of said judgment. The judgment amounted to about $1000. I negotiated with H. P. Hubbell. Had transactions with H. P. Hubbell who was then owing me some three hundred dollars.—Took the judgment at a discount on said demand, making further advances. Owned the judgment absolutely. Did not advance the whole amount at once for the judgment, but paid $200 or $250 in addition to the amount owing from H. P. Hubbell. After the filing of the creditor's bill, I received the bonds of the city in payment of the judgment. Subsequent to the time I had the difficulty with the City Council, I made an arrangement with H. P. Hubbell and did let him have a portion of the city bonds, which he took in a final settlement of the transactions between said Hubbell and myself. I had a conversation with Judge Hubbell in relation to the judgment. I had the conversation after the judgment had been assigned. I had no conversation with Judge Hubbell during the pendency of the proceeding. I let H. P. Hubbell have a bond in payment for the judgment. I think I gave him one of the identical bonds which I received from the city on the judgment."

That was Blossom's story then, utterly inconsistent with the record evidence now before the Court. He swore that he believed he had the assignment of the judgment of Henry P. Hubbell. He swore that Henry P. Hubbell was owing him some, that he made him further advances, and was to pay him the balance. He swore that after he had the difficulty with the Common Council he made a new arrangement with Henry P. Hubbell, to liquidate the balance with part of the city bonds, the proceeds of the judgment. He swore that he, Levi Blossom, received payment for that judgment from the city in bonds of the city, and that he paid Henry P. Hubbell a bond, and he thought one of identical bonds which he, Levi Blossom, had received from the city in pay-

ment of the judgment, for the balance due Henry P. Hubbell on the purchase of the judgment.

That was Levi Blossom then. In utter refutation of that story, the records disclose that not several bonds, but one single bond was issued to pay the judgment. The records disclose that not Levi Blossom, but H. P. Hubbell himself received the bond. The record discloses that not Levi Blossom, but Levi Hubbell disposed of the city bond so issued. The record discloses that he had an assignment, not of Henry P. Hubbell, but of Jonathan Taylor. We find the whole story bald and nude, as it was contradicted at every step by the record, contradicted in every material point from beginning to end, by the record which cannot lie. Mr. President, I believed that the precaution of the Committee in examining Mr Blossom, had saved our case from contradiction. I knew that his story there, was impossible by the record. And I could not anticipate a new version, after so minute a statement, so fear fully annihilated. Mr. President, I believed that audacity would stop there. I believed that audacity would submit, with what grace it could, to such contradiction. Sir, I was mistaken. When it appears in living proof that there was no assignment on earth from Henry P. Hubbell; and that the assignment to Blossom was not the assignment of Henry P. Hubbell, but of Jonathan Taylor; when it appears in living proof, that not several bonds, but one only was paid by the city on the judgment; when it appears in living proof, that Blossom did not receive that bond, and could not share it with Henry P. Hubbell, but that Henry P. Hubbell himself received it from the city, and that Levi Hubbell sold it, and received the proceeds. Mr. President, Levi Blossom walks coolly into this Court—the same Levi Blossom who tells you he made that deposition before the Committee of the Assembly, upon his solemn oath before man and God, to testify on that subject the truth, the whole truth and nothing but the truth; the same Levi Blossom, who swore to the Committee that he believed he had the assignment of Henry P. Hubbell, swears here that he had the assignment of Jonathan Taylor; and more, swears to a minute reason for taking the assignment of Jonathan Taylor, because he did not choose to have several assignments or several entries.

Judge HUBBELL. Did Blossom swear that he received the assignment from Taylor? Blossom, if I recollect right, told the facts—that it was executed from Taylor, but that he received it from Henry P. Hubbell.

Mr. RYAN. I will read again what he said about it. He tells the Committee—"I had an assignment of a judgment in favor of Jonathan Taylor vs. the City of Milwaukee. My impression is, that I had said assignment of Henry P. Hubbell."

Judge HUBBELL. What I ask is, did he not swear before this Court that he did have it of Henry P. Hubbell?

Mr. RYAN. If the defendant will have a little patience——

Judge HUBBELL. I only want that you should state the truth.

Mr. RYAN. I trust I need no lesson of truth. I will receive none from this defendant. Mr. President, it is not my habit practising at the bar to misstate testimony. And God forbid that I should do so here. But I will not flinch for any interruption, or for any consequence, from making what comments seem to me just on the testimony of this witness. God forbid that I should be so false to my duty. As for speaking the truth, this Court will judge between me and

this defendant. I did not trust to my memory. I read the witness' deposition. And if any one suspects me of reading it incorrectly, he may read it for himself.

Judge HUBBELL. I said nothing of what you read. I spoke of what Blossom's testimony was before this Court.

Mr. RYAN. Mr. President, there the responsibility rests on the witness, not on me. I am not responsible for the contradictions between his evidence then and now. I can see where the discussion hurts. I will demonstrate the contradiction to the mind of any willing to receive demonstration. Blossom never pretends that he had more than one assignment. And I again to proceed say, that Blossom, who swore to the Committee that he had an assignment, and that his impression was that he had that assignment of Henry P. Hubbell; who never mentions Jonathan Taylor's name in his deposition, except to state the judgment; who, accounting for his own connection with the judgment and his own title to it, swears to the Committee that his impression is, he had the assignment of Henry P. Hubbell—now swears to this Court that he had only this identical assignment proved here from Jonathan Taylor to him. And he assumes to explain away his contradiction by the quibble, that true it was the assignment not of Henry P. Hubbell but of Jonathan Taylor, but it was handed to him by Henry P. Hubbell! It is pretended here, that swearing to the whole truth before the Committeee, when he swore that he believed he had the assignment of Henry P. Hubbell, he meant that he received this assignment of Jonathan Taylor, through the manual agency of Henry P. Hubbell; that Henry P. Hubbell's hands delivered it to him! Mr. President, fraud is infinitely cunning. That is splitting hairs with a vengeance; splitting them more finely than they were ever split by the subtlest metaphysician. Swearing first that he believed he had the assignment of Henry P. Hubbell: he swears when that is proved impossible, that he meant he had the assignment of Jonathan Taylor from the hands of Henry P. Hubbell. Splitting the hairs of speculation is fine metaphysical recreation; but splitting the hairs of truth under oath, is dangerous practice. A man swears that he had title to certain land by a deed of John Doe; and when it turns out that he had the deed of Richard Roe, he calmly looks the Court in the face, tells them that John Doe carried Richard Roe's deed to him, and goes forth in triumphant vindication of the truth of his first oath! That is the avoidance of Blossom's first story now set up here. That is the splitting of the thread of truth, which this Court is invoked to sanction.

And why—I think the counsel asked—why should Mr. Blossom say he had the assignment of Henry P. Hubbell instead of Jonathan Taylor? Was it not entirely immaterial to the question of the defendant's guilt? Sir, I will endeavour to answer the question. Remember the consequence given in the early stages of this cause to the assignment to Henry P. Hubbell. Remember all the efforts to connect H. P. Hubbell with the purchase of the judgment. Remember that Blossom still swears that he bought it from Henry P. Hubbell. Remember how strong their case would be, had they been able to produce the assignment from Jonathan Taylor to Henry P. Hubbell, to produce an assignment from Henry P. Hubbell to Levi Blossom, and to produce Henry P. Hubbell as a witness to his purchase from Taylor and Blossom's purchase from him. Remember all the efforts here to smooth the way for Henry P. Hubbell as a witness. He has not entered upon it; but that does not disprove the in-

tention formed for him that he should. The motive for suggesting that Blossom's title came from Henry P. Hubbell, is transparent and obvious. Where would Taylor's evidence be then? Blossom's title derived from Henry P. Hubbell, Henry P. Hubbell here to contradict Taylor's account of the defendant's purchase—what could vindicate the honest sincerity and truth of Taylor's oath? But that is not the only difficulty to be overcome. The same Blossom so sworn, had told the Committee that he received the bonds of the city in payment of the judgment; that when he had had the difficulty with the City Council, he made an arrangment with Henry P. Hubbell and did let him have a portion of the city bonds, which Henry P. Hubbell took in final settlement of the purchase of the judgment. That is to say after Blossom's fuss with the city, he arranged with Henry P. Hubbell to take for the balance due him on the judgment a portion of the bonds which should be received in payment of the judgment; and when he, Blossom, received the bonds, he did let Henry P. Hubbell have a portion of them, in final settlement of the transaction. And now the same identical Blossom swears to this Court, that when the City Council was audacious enough to say that Blossom owed them and that there ought to be an offset of the mutual indebtedness,—he swore on oath; that he, Levi Blossom, registered an oath in heaven that he would take money and nothing but money, in payment of the judgment. He told the Committee that he *did* take bonds in payment of the judgment and that he discharged the balance which he owed on the purchase of the judgment with a portion of those bonds, by arrangement—he believed with one of the identical bonds so received from the city. When the living truth contradicts that story in every part from begining to end, Blossom comes coolly and calmly into this Court and swears that he never received payment of the judgment from the city at all! He swears to this Court that when the city insulted his dignity, by claiming to extinguish their indebtedness to him on the judgment by cancelling his indebtednees to them for taxes, he raised his voice, and swore aloud, and registered an oath on high, that he would never take anything but cash for the judgment! And afterwards, when this terrible city, denounced for their overreaching, grasping conduct, in order to rid themselves of the injunction, which it is said had been modified just to suit them, offered to give a bond for $1200 worth par, upwards of $100 I believe more than was due on the judgment; offering to Blossom $1200 for what he says cost him $850, a bonus of about $350 for the wear and tear of his sensibilities for some two weeks; Levi Blossom stood aghast! When the city tried to induce him to take this bonus, Levi Blossom stood aghast! Like Shylock, he remembered his oath. Should *he* "lay perjury upon his soul?" Shylock could not take thrice his money. Blossom could not take the profit of some $350. Not he—he could not take profit on a perjured conscience! Blossom had an oath in Heaven. In what form taken or what the oath was, we are not told. Whether he stood solemnly up before God and man, and said "So help me God, I will take nothing but money;" or whether he swore a good round oath that "he'd be damned if he would;" I can only conjecture that he swore at least with as terrible an effect as "our army in Flanders." At all events, it had a sanctity to bind his conscience. Levi Blossom could tolerate no trifling with the solemnity of such an oath. He would not take the bonds! So he went to Henry P. Hubbell and said to him, "Here is a nice little bonus offered; here is a handsome operation; but I can't take it;

my solemn oath is in the way. Pay me $50 for my trouble and expenses, and pay me back my advances, and I will let you have the whole thing back again, and you will make the profit of it." It was a magnificent sacrifice of money to conscience! A sublime surrender of human interest to the solemn obligation of a solemn oath!

But let us see. A Senator, I do not remember who, seemed to see some philosophy in the overwhelming obligation of that terrible oath, and wanted to know of Mr. Blossom, if he had registered that oath on high, why, without re-transferring the judgment, while he still held the title to it, hea uthorized Henry P. Hubbell to go and receive the bond in his, Blossom's, own name? The question was a shrewd puzzle to Mr. Blossom. I forget the precise answer which he mustered to it. I believe it was substantially, that it had never occurred to him that he was thus vicariously violating the solemnity of that oath!

And mark his story well. After that solemn account to the committee upon his solemn oath, Levi Blossom comes here to undo it, and so to undo it, as still to screen this defendant. Confronted with the damning proof that Levi Hubbell and Levi Hubbell only, purchased the judgment from Taylor, and with the damning proof that Levi Hubbell and Levi Hubbell only had the avails of the judgment, Levi Blossom coolly comes here to face that donble proof and his own previous evidence. And unable to overswear either of the extremities of the proof he adroitly slips in between; and tells you in effect that he was *the* owner of that judgment just so long as Judge Hubbell was acting judicially upon it and no longer. Not venturing to deny that the defendant was the original purchaser, not venturing to deny again that the defendant finally received the avails, he still assumes the ownership pending the motion to dissolve the injunction, and up to the offer of the city to settle, and then skilfully slips out of the ownership. How he slips out, we shall see by and by. But he does *slip* out in utter contradiction of his former oath, just in time at once to save *his* friend and to save himself from the record evidence of the payment of the judgment.

But let us see further. Why in the name of truth and sense does Levi Blossom, an intelligent, self-possessed, able man, having sworn before the Committee about a not very far gone transaction; having sworn about a transaction of some magnitude to him—although he spoke of not entering it in his books, as of not entering every shilling and sixpence, I take it that even the Bank of Milwaukee, which I suppose to be little more than Levi Blossom, does not keep books upon any such magnificent scale that little trifles like $1200 are not entered there—why, having been sworn there to tell the truth, the whole truth and nothing but the truth, and swearing that he always owned that judgment from the time it was assigned to him until the time that it was paid, that he had paid Henry P. Hubbell for it, and that the city had paid him—why, in the name of sense and truth, having failed to clear the skirts of this judge by that oath, contradicted by all the witnesses, contradicted by all the record—why does he hasten in here and swear to an entirely new story? Why did he come in here and swear that he owned that judgment just as long as was necessary to shield the conscience of this judge; and the very moment it was not necessary to shield the judge's conscience, the very moment it was necessary to reconcile his own story with the record which could not lie, why turn round and swear that he had ceased to own it? Not only swear to the fact, but swear to every little

inducement, every little motive, every little detail of time and place and circumstance? How in the name of holy truth, can man do this? No weak brother; a shrewd, keen, able man, why does he do it? What is his excuse? How does he expect to account for all this? Why that remembering now every detail of fact and motive and purpose, with keen precision; some three months ago his memory of these facts failed him, and he could not remember the essential facts in the case, misstated the essential facts of the case. Is it in human credulity to believe, that if Levi Blossom had purchased that judgment at a bargain; if he had been plunged through it into a bitter controversy which he had carried on to a most successful end; if he had sacrificed his bargain and the result of his judicial victory, to the adjuration made in his anger; if to shield his conscience, he had relinquished the sale altogether; if he had done so to avoid his being paid by the city, and was never paid by the city, but received back his advance, because he could not settle with the city without violating his oath; is it in human credulity to believe that he would have come here months ago forgetting all that, all, all; and that he can come here now with a memory, for accuracy, for detail, for certainty, for confidence, trained like a race horse for the course? An ingenious story, a skilful story; but too late, too late. Against Levi Blossom's oath on this stand, I put the oath of Jonathan Taylor. Against Levi Blossom on this stand, I put the whole record evidence. Against Levi Blossom on this stand, I put Levi Blossom himself before the Committee.

But there are other marks here of truth and falsehood. You will remember one little circumstance that Taylor swore to. He said that in the conversation between Levi Blossom and Levi Hubbell in regard to the judgment, Judge Hubbell himself suggested the creditor's bill; and suggested that, in order to be able to file the bill in time, an order should be made shortening the return day of the execution on the judgment, that was an important matter. No creditor's bill would lie, until an execution had been returned unsatisfied. And if issued with the ordinary return, at the next term of the Racine Circuit Court, it would be too late for an injunction to shut up the city treasury during the collection of the tax. Taylor, an ignorant layman, knowing nothing of creditor's bills, swore to that before the record came here. When the record came, there was the execution made returnable a day or two after it was issued. Taylor swore also that Judge Hubbell told Blossom to send to Racine for the execution. Blossom admits that he did write to the clerk of the Racine Circuit Court for the execution. But he could tell nothing of what he wrote, tell nothing of the short return of the execution. Blossom's letter is lost. But we will see that he must have written if he wrote at all, for an execution with a blank return day, to meet Judge Hubbell's suggestion to him. I ask the attention of the Court to the original execution. The clerk of the Racine Circuit Court sent it to Milwaukee with the day of the return blank, for the evident purpose of having added to it an order for the short return day; and after it came to Milwaukee, an order is made on the back of it by the court commissioner, making it returnable a day or two a-head. But Blossom, with all his minute memory, with all his zeal in business, has no memory at all of that important item, remembered by Taylor who had no interest, and confirmed by the unlying record. Which does that confirm, Levi Blossom or Jonathan Taylor?

Another noticeable fact, confirming our views of this transaction, is this. In April, after the settlement by the city, the defendant writes to Taylor, and speaks

as a matter of course of the possession and sale by him of the bond. They do not pretend that Taylor knew anything of any subsequent transfer; if there had been one, it would have been natural for the defendant to have mentioned it in that letter, as accounting for his possession of the bond. But he mentions it, apparently as a matter of course, arising from Taylor's sale to him, which Taylor must know. That, too, confirms Taylor, not Blossom.

But Blossom was taken unprepared by the Committee of the Assembly. He comes here now with regenerated memory. He has been home to the Bank of Milwaukee, and returns from the contact, like the fabled giant, refreshed, restored, re-animated. And yet he tells you that, save this assignment from Taylor, there is no scrap of writing, no scrap of entry, no scrap of record, that he can tell of, growing out of his concern in this whole transaction! He would have you believe that he paid out $850, received back $900, might have received back $1250 but for his sacred vow, and there is not an entry, that he knows of, of the whole transaction in his books. His attention was called to that most suspicious fact. He was asked the reason why such a transaction never found its way into his books of account. And Levi Blossom, the able, successful, skilful man of business and banker, calmly says in answer, that he takes out his money in round sums, and spends it, and does not enter every bit or picayune! Magnificent Mr. Blossom! The bank of England itself, even the sublime financial genius of George Smith, or our own giant of finance, Alexander Mitchell, who has made a snug little nest out of his current funds, and may possibly do business on as great a scale as Mr. Blossom, would hardly disdain entries of a transaction involving in its progress $850 to $1200. I hardly believe they would disdain those small "bits," those pretty "picayunes." If the bank of Milwaukee begins upon that magnificent scale, disdaining hundreds and single thousands, reserving the gorgeous pages of its sacred books—I suppose—for tens and hundreds of thousands, if not for millions; I think that under fitting patronage of the legislature, the executive and the judicial, it is yet destined to overshadow all other bank monsters. Wo to the bank of Atlanta! I have some recollection of a dream in which some one of the descendants of Abraham, I think, saw one set of monsters swallow up another set of monsters. If I recollect rightly, the lean monsters swallowed up the fat ones. Has that grand monster, the bank of Atlanta, been fattened only to be swallowed up by the bank of Milwaukee—that stupendous establishment, that disdains $800 or $1200 entries in its books!

Taylor's statement is consistent and uniform throughout, confirmed step by step by the record evidence and by every line and letter of the record evidence. Taylor is an unassuming, quiet, plain man incapable by character or ability to devise a cunning, skilful scheme of falsehood. And he seems to be without a motive to falsehood.

Blossom's story is not uniform, is inconsistent, is contradictory, is improbable, and is not supported by the record evidence, is in very many material things utterly contradicted by it. Blossom is a shrewd, cunning, adroit, practised man, who comes here with a strong inducement to swear all fraud away from this transaction.

Our theory is a simple, plain, consistent, probable one, proved in itself beyond all doubt, confirmed by all the record evidence. It is that Judge Hubbell

purchased this judgment from Taylor, and continued to hold it until he received the $1200 bond which he sold to Mitchell.

The theory of the defence is not a simple, plain, consistent or probable one. And it has been driven to change by the force of testimony. Before the Committee of the Assembly, Mr. Blossom gave it thus: that he, Blossom, had purchased the judgment from Henry P. Hubbell, had paid Henry P. Hubbell for it, always continued to own it till it was paid, and that he was paid for it by the city. From that theory the record drove them. Here is a new theory, contradictory of the first, not simple, not plain, not consistent, not probable. It is this: true the defendant purchased, but he sold it to Henry, who sold it to Blossom, who sold back to Henry, who sold back to the defendant. And of all those sales, you have no assignment, no written evidence, no line or figure in writing, except the single assignment executed on the original sale of Taylor to the defendant. Not a paper, not a memorandum, not an entry, not a line, not a figure! And this in a transaction ranging from $850 to $1200. Once out of honest, simple Jonathan Taylor, you have the title of this $1000 judgment dancing back and forth between Levi Hubbell, Henry Hubbell and Levi Blossom, four several times, without restraint or form, with the freedom and license of rabbits running in and out of their burrows. Improbability, suspicion, are in the theory itself, independent of all the weight of suspicion on the testimony which discloses it, independent of the weight of all the contradicting evidence.

And to all the affirmative suspicion, there is one most pregnant negative to add. Take Levi Blossom's story for true, Levi Hubbell never had a dealing with him about this judgment. Henry P. Hubbell was always an intermediate link between them. After Levi Hubbell bought the judgment and took the assignment of it to Levi Blossom, somehow or other, some time or other, the title got into Henry P. Hubbell; how or when or why, Levi Blossom who held the legal title cannot tell. Then Henry P. Hubbell sold it to Blossom, Blossom taking without inquiry the old antedated assignment of Taylor. Then without any new assignment, Blossom relinquished it to Henry P. Hubbell again. Then again, sometime or somehow and somewherefore,—no one can tell when, how or why,—the title found its mysterious way back to where it came from, to Levi Hubbell. But throughout all the ringing of the changes, there never was dealing between Levi Blossom and Levi Hubbell. Each dealt with Henry P. Hubbell; Henry P. Hubbell was always the go between; and without Henry P. Hubbell's testimony, these dark passages cannot be explored. Where is Henry P. Hubbell all this time? He could clear up all doubts, he could fill every hiatus of evidence. Why is he not here? There was by Blossom's story, an electricity of communication between him and the defendant, thus connected, never meeting. Henry P. Hubbell was the wire that conducted the odic force from one to the other. Where is he? Why is he not here? Could he not afford a week? Could he not afford a day, to shed his light upon this transaction, so dark in his absence? Had he no hour of freedom or of leisure, to give to the rescue from shame and danger arising from his own unexplained dealings, his friend, his benefactor, his uncle? Had he no feeling for the honor of his own blood? Or had he no evidence to give to save it? Is he an honorable young man, in whom conscience controls loyalty? The necessity of his presence here was known from the beginning. Called here, he

has not come.—His absence is pregnant with meaning, pregnant with instruction on the vital question, who speaks the truth here—who the falsehood.

Mr. President, I leave this case. We believe, these Managers and myself, that every member of this Court is conscious, we think that every man of unprejudiced mind must believe, that the judgment of Jonathan Taylor against the city of Milwaukee was purchased by Levi Hubbell; that Levi Hubbell continued to own it till it was paid; that he sat upon the bench and so adjudicated upon the creditor's bill filed on the judgment, that he compelled the city of Milwaukee to pay a large bonus in discharge of an injunction, which he kept hanging over them, against the law, to serve his own pecuniary interests.

The first Article alone remains. The counsel on the other side have read and commented upon the Article at some length. They have both discussed the language and construction of the Article, and said that it displayed singular ingenuity in its frame. One of the gentlemen thought it consisted of a string of immaterial allegations; he considered every averment as an independent fact, separate and unconnected with the rest. The other gentleman admitted the averments to be material and forcible in their combination, but argued that they were so, not in themselves, but only by the force of the connection and body speciously given to them by the construction of the Article. Now, in point of fact, no skill or art went to the framing of the article. The committee of the Assembly which was charged with drawing up these Articles, deemed it fitting to make this what it literally is, a condensed statement of the testimony of the defendant's zealous friend, William Sanderson. The facts are averred with precisely the connection given to them by the evidence. The article is a simple epitome of the testimony given by Sanderson before the Committee of Investigation. And what are the facts? Sanderson was interested in a suit involving some $21,000. Sanderson nominally was a defendant; but as he has explained to you, it was for his interest that the plaintiff should recover. His interest was to the full amount of the suit. It was an attachment suit, proceeding on alleged fraud in the assignment of the principal defendants, the Comstocks. The Comstocks denied the fraud, and traversed the affidavit, on which the attachment was founded. The issue formed by the traverse, on which the whole suit depended, was to be tried and decided by Judge Hubbell without a jury, without a writ of error, without an appeal. The decision of a question involving the good name of the principal defendants, as well as the pecuniary amount, was to be submitted to the absolute judgment of the Judge's mind alone, without review or redress upon the earth: a cruel statute, but such it is, and it must be accepted as it is. In these circumstances, an interview was deliberately sought by Sandesson, and took place here in Madison, between himself and the Judge invested with that fearful power, for the purpose of discussing the suit over which that power existed. It is not easy to say, from all the light shed upon it by Sanderson's testimony, to what length their discussion of the suit may have gone. But the subsequent history of the case, gives deep significance to that shameful interview. Some months afterwards, the traverse came on to be tried before Judge Hubbell; the evidence was given, the argument made, and the issue submitted to the Judge for his decision. Even then, Sanderson seems to have received some inspiration of the result. God knows how, I cannot tell. But by some magnetic sympathy, by some inspiration, an assurance comes to the heart of Sanderson, that his hopes of that cause are to be ful-

filled. No mere hope; it is a fixed assurance. He speaks of it and acts upon it. However it came to him, it is such that he suggests to the plaintiff in the cause, the giving of some present to the Judge; same reward for the good which was to come. Sanderson was an unwilling witness, and the facts were drawn out of him with difficulty and in fragments. But we have the fragments. Long before the judgment of the Judge was announced in Court, long before it could have been honestly announced anywhere, while the Judge still had the subject before him unconsidered and undetermined—Sanderson was rejoicing at the judgment to come, which was to save him from ruin, as if it had already been rendered. He is an impulsive, demonstrative man. He could not suppress his sense of joy. He exulted openly at his good fortune; his heart was glad within him. What light has broken in upon his troubled mind, solving all its doubts, relieving all its anxieties? I cannot venture to say. I appeal for the answer to all the back-door developments in this cause. Much may be conveyed without being broadly spoken.—Much may be said without words. There is a magnetism to give deep meaning to vague phrases, which say nothing, but convey all. There is a magnetic power to give as much intelligence to looks and nods and wreathed smiles, as to the broadest and most emphatic words. There is an electricity of intelligence, by which mind speaks to mind, in an unuttered language of its own. There is power in such a Judge, sitting in judgment upon the fortunes of a man like Sanderson, to read the tumultuous beatings of his heart. There is a power in such a Judge, to change the anxious palpitations of such a heart to the exulting throbs of hope; to interpret and direct its emotions of gratitude. An electric spark lit up Sanderson's heart with prophecy and gratitude. Long before the judgment, long before the main event of this Article, his simple heart was filled with anticipated success; and whatever prophecy had filled it, coupled success with gratitude,—the judgment to come, with judicial reward. In New York he suggested to the plaintiff a present to the Judge. At home, gold watches and all sorts of pretty presents seem to have been dancing through his generous imagination. Poor, simple William Sanderson could suppress neither the triumph of his mind nor the gratitude of his heart. They had been both played on by a master hand.

The cause, as I have said, was held under advisement. The time for pronouncing judgment is approaching. The defendant's counsel in this cause, who was one of the plaintiff's counsel in that attachment, has gone upon the stand and testified to a private conference with the judge. He tells you that the Sunday before judgment was pronounced, being about to leave home the next morning, he inquired of Judge Hubbell what would be the decision of that cause. He says that he was told; but it seems that Sanderson was not there, had not yet returned from New York. When Sanderson came back, I believe it was the day following, he and Judge Hubbell met somewhere in the United States Hotel. Sanderson broadly asks the Judge, what his decision in that case will be. He wants to make assurance doubly sure. Judge Hubbell tells him, after some little affectation of hesitation, that the decision will be in his favor. Sanderson expresses his gratitude. He understood it as a personal kindness. He opens out his grateful heart like a child. And *then*, while they are thus speaking there together, while they are coying there in mutual coquetry, Judge Hubbell tells him his necessity. He taps Sanderson's grateful heart. Whether any of Sanderson's loose talks about presents had come to the Judge's hearing, I

cannot pretend to say. It was hardly necessary. There was no trouble in reading Sanderson's grateful impulses. The Judge tells Sanderson that he wants $200 for a purpose which he names. *In that same conversation*, in which he had in terms revealed his favorable decision, he solicits $200 from Sanderson. Sanderon was reluctant to remember that it was all in the same conversation. After waiting a long time to see if he could remember it—more likely to see if he could forget it—he at last swore to his recollection, that it was all in the same interview. You can all judge if simple, good-natured, grateful William Sanderson, who regretted almost to tears upon the stand, that he had got his friend into trouble, would be likely to remember unnecessarily anything against him.

The Judge told Sanderson that he was going to make a decision which would save Sanderson from ruin; and in the same breath, solicited from Sanderson a loan of money! A less grateful man than Sanderson, a man who had never before thought of a gift, would have understood the suggestion and made the *loan*. The solicitation was made with a power not to be denied. Who rejects the solicitation of the highway-man's pistol? Sanderson's grateful heart was ready for a *loan*. Sanderson gave and the judge took the money, without a witness, without a voucher, without a line or word to fix the terms of the loan or the time of payment! The *loan* is made and the judgment follows. And soit rests for a long time. In the mean time, you have Sanderson's construction of the transaction. Reluctant as he is, he tells you that he meant it as a gift. He charged the money on his books, not to Judge Hubbell as a loan, but to the plaintiff in the suit, in whose favor the decision was made, as an expenditure for him. The decision saved the poor William Sanderson from ruin, but it also saved a debt of $21,000 to the rich Theodore Perry. It was fit that the money should be paid by Perry and not by Sanderson; and so Sanderson charged it to Perry, communicated the fact to Perry, and Perry made no objection. A fair transaction certainly; a pretty loan. And so it passes on for some time. Both Sanderson and the Judge leave Milwaukee and are gone for a considerable time. When they meet after the return of both, the Judge gives his judicial modesty an airing. He tells Sanderson that he is now in funds and can pay the money. Sanderson naturally enough answers him "to wait till he is called on," or something of that sort, by which he meant to convey—and which must have conveyed—the idea to the Judge that the money was not expected to be repaid. If there were any possibility of Judge Hubbell's innocence before, if poor, simple, weak William Sanderson had been the tempter before and had seduced the innocent chastity of his judicial friend—that reply of Sanderson, "to wait till the money should be called for," must have put simplicity itself upon its guard.—It was a direct proposal of a gift; and so *then*—if not before—Judge Hubbell understood it. He asks Sanderson, "do you think I would take that money as a gift;" and still offers and still Sanderson declines payment. He understood it all. If never before, *then* his understanding of Sanderson's intent is palpable and undisguised. And mark the guilt;—he is in funds then, he is in no pecuniary necessity then, he is able to pay the loan then; but *he does not pay it.* His judicial concience is aroused. His judicial integrity is aroused. He knows and acknowledges that Sanderson intended the money as a gift. He has the money in his pocket. He can pay it if he will, and rescue his conscience from the guilt of bribery. Mr. President, if there had been a smouldering spark of

judicial chastity in his heart, it would have been blown into a flame by that imputation of mercenary prostitution; and he would have repaid the money on the spot, with indignation and abhorrence!—But he did not pay it. He assumed a modest, but it was the modesty of the wanton, mocking chastity. And is this Court so weak, is this Court so wide of all human sagacity, as to see a wanton visibly lipped and fingered before their eyes, and still believe her chaste? The Defendant's conscience was warned, his integrity was warned, his judicial chastity was put upon its guard. He had the money in his pocket to pay, but did not pay it. He professed the modesty of chastity, and wantonly submitted to the embrace of bribrey. We are askee what could he do? Sanderson would not receive payment they say; what could he do? Would we have him knock Sanderson down? If it was necessary to pay the money, to relieve his character and his conscience from the guilt of bribery, yes! He should have paid the money; gently, if he could, roughly, if he must. At any cost an honest man would have paid it. Talk of knocking Sanderson down! Little force was put forth against Sanderson's purpose. Little force would have been sufficient to overcome the bashful, blundering, clumsy, good nature of poor Sanderson, who was throughout the tempted, not the tempter.—Why, Mr. President, if he had not the money in his pocket, he should have parted with his last luxury on earth—he should have sold his last trinket or keepsake he had on earth, to redeem his soul from the guilt of bribery. Mr. President, an honest Judge could not eat or sleep or sit by his hearth or pray to his God, till he had sent his dearest possession, the jewels that decked his wife or daughter, to the pawnbroker to pay that debt thus remitted as a bribe, to save his conscience from the imputed pollution. But the Judge had the money in his pocket. The suspicion was cast upon him to his face. He said he would pay it, but he did not pay it. He satisfied his conscience by a cheap offer to pay to a man who would not receive it. He kept the money which he knew was intended as a gift, and his conscience slept in peace.

Well, many weeks roll on, and so the matter rests. The money remains in the Judge's pocket, remains charged by Sanderson to Perry. And the Judge's conscience sleeps the sleep of innocence. A rumor of these charges against the defendant gets abroad. Judge Hubbell solicits another interview with Sanderson. The interview takes place. Sanderson is able to forget now, what he admits that he was able to remember before the Committee, that they spoke together of the charges and of *this* charge of bribery against the Judge. He still admits that he had then heard of the charges. Judge Hubbell sought this interview for the purpose of paying the money; but still the money is not paid. Some man without a name was to be there with the money, but did not come. Why appoint a time for payment, of his own accord, unasked, till the money was ready? Sanderson discloses why. After a feint about paying the money, it is said that a note will do just as well; and accordingly then, for the first time, Judge Hubbell gives Sanderson a due bill on demand for the $200. Now we know that Sanderson intended the money as a gift. We know that the Judge was fully aware that Sanderson intended it as a gift. Why, then, that mock interview for payment, where no payment was prepared? Why, then, that mockery of a due bill, when none was demanded, when none was needed, months after that loan had remained in that bald, scandalous shape? Sanderson wanted no due bill, no voucher. He wanted nothing but to let matters rest.

He wanted nothing for what he had paid as a gift. And the defendant knew it. Why, then, that mockery of paying, of securing the loan? Why that interview at all? Why did the defendant send, at that late day, for Sanderson to go through the show of giving him a due bill? It is claimed that it was a legitimate transaction. It is claimed that there was no guilt in it. It is claimed that no due bill, no time for payment, was necessary to redeem it from suspicion. Why, then, that attempt, months later, to cover it all up with the outwardshow of a mere loan of money? What prompted all that mockery? Guilt, Mr. President; guilt was goading on this defendant, when the coming shadow of this trial fell upon him. It was an attempt, glaring and palpable, to cover up the guilt of this transaction from your scrutiny this day.

But that is not the last. They have yet another interview. Judge Hubbell again sought an interview, and again they met, as before, in secret. It was after this investigation had begun, or just before it. Saunderson's memory is a little astray, but he admits that he testified before the Committee, that it was after charges had been preferred to the Assembly. He gives a confused account of interviews between him and the Judge, about that time, on the subject of this charge; but he will not remember that it was spoken of at this particular interview. A similar mockery is acted between them, Judge Hubbell goes through the form of handing over to Sanderson the money which he had long held, knowing it to be intended as a gift. Sanderson goes through the form of receiving it, and of surrendering the due bill. Months before the Judge's conscience had been alarmed, he goes through the ceremony of handing over a package, labelled $200, to Sanderson; sees Sanderson receive it, uncounted, unexamined, knowing nothing of it, except that on the top was a bank bill, and a label marked $200, and then surrender the due bill. Sanderson sits there alone with the Judge, receives the parcel of money, holds it in his hand unexamined and uncounted, gets up, lays the parcel of money on a chair, makes his bow and withdraws! So endeth the second lesson! After this mockery of payment, Sanderson leaves the money and the Judge together in the Judge's room! And so that ceremony of payment, so the whole transaction remains to this hour!

Has shame left this world, that this is defended here as a legitimate transaction, an honest loan? Have fraud and guilt no blush for the eye of the world? Is it thought that bare-faced, gross mockery like that, can deceive? Did honesty ever deal thus? Did innocence ever resort to such trick? Who is to be duped by such wanton's modesty, this delicacy of guilt aping innocence? It is the same old delicacy with which Thurston left the bribe on Lady Macclesfield's table. That gentleman did not insult the dignity of the lady by saying in broad, outspoken guilt, "here, my lady, is a bribe of so much money." But he quietly laid the money on the table with her, and withdrew. He and Sanderson both got what they wanted. The evasion, the mockery of the transaction, proves its guilt.

Gift or loan, it has the marks of guilt, and was a bribe. It was said by the counsel on the other side, that a loan of money cannot be a bribe. Is that so? Cannot any public officer, legislator, judicial, or executive, be corrupted by a loan? If one receives money as a loan, not as a gift, to swerve from his duty, is not that a bribe? Is not a loan given as a bribe, as clear a bribe as a gift? Does not Alexander Mitchell accommodate his friends and deal out charity, at

12 per cent? Could he not as well corrupt an officer, at 12 per cent? Suppose the Governor of this State should have in his hands a bill passed by the legislature, say to suppress the Atlanta money. It is in his power to sign it or to veto it. He needs a loan in his business operations. While the bill is in his hands, he goes to Mitchell for a loan. He talks to Mitchell of his power over the bill, and of the loan he wants. What if Mitchell say to him, "veto that bill, and I will lend you $20,000 at twelve per cent. for a year." Suppose that done. Is not that loan a bribe? Suppose the Governor's friends, men of substance and wealth, sign a note for the loan; suppose the interest higher than interest was ever paid before, the debt secured as never debt was secured before; suppose it paid the hour it matures; it is palpable, naked, damnable bribery. A bribe may be in any form; and a loan may be as much a bribe as a gift.

It is said here that unless you pay your judges higher salaries, you must expect them to be borrowing or tampering in money. I take it that the judges take their offices without compulsion, knowing the salaries attached to them; and that all this cry of low salaries comes with an ill grace from one who zealously sought the office, and is a poor excuse for his conduct in it. It is said here that a judge has a right as well as any private man, to borrow from his friends. So he has. But conceding the right, it is one apt to lead to abuse; and a judge of sensitive conscience, will shrink from a free exercise of it. The fewer pecuniary transactions which put him under obligations to his neighbors, a judge has resort to, the better. But no one imputes a mere pecuniary obligation to a neighbor as a sin in a judge. It is more properly what the other side call an impropriety, an indelicacy. But when this Judge saw Sanderson's heart palpitating with anxiety for the fortunes of his life, resting as they were absolutely in the breath of this Judge's mouth; when this Judge saw Sanderson humbly approach him to learn, from his own lips, the fate of the suit on which so much depended; when this Judge most improperly and scandalously announced his future decision to Sanderson in private; when this Judge saw the gratitude which swelled Sanderson's heart, like water in a choked fountain;—if he needed money honestly, an honest heart would have told him, that poor, good-natured, warm-hearted, grateful, weak William Sanderson was the last man on earth to ask it of. Sanderson would have given thousands where he was asked for hundreds. If then and there, this Judge had honestly wanted a loan of money, one instinct of integrity, one sentiment of judicial chastity, one human sense of self-respect—if it had been in his heart—would have sent him to his worst enemy on earth, to the pawn-broker, to beg in the streets—would have sent him anywhere and to anybody, to supply his need, rather than to solicit a loan of that poor, helpless suitor at his feet, whom one breath of his mouth had power to ruin or save from ruin! And to tell him that he would save him, to hear his gratitude, and in the next pulsation of his heart to solicit a loan of money! Shame, shame, shame! If he could not borrow elsewhere, could he not steal? It might, perhaps, be a greater crime against the law, but a less treason to the majesty of self-respect!

It is said again that this could not be bribe, because it happened after the decision had beed determined on by the Judge, and announced in private to Mr. Arnold. I shall not stop to comment on the impropriety of the announcement to Mr. Arnold. I will take that as I find it. This shameless transaction with

Sanderson took place before the judgment was given. When that money was solicited by Judge Hubbell, when it passed from the hands of Sanderson to him, it was still in the power of the Judge to make what decision he should see fit. He was in no way bound by his secret announcement to Arnold. He could well say to Arnold, that additional investigation had changed his views. He could well refuse to be bound by that secret and indecent announcement of what his decision would be. It still rested with Judge Hubbell to make what decision he saw fit. It was not only his power, it was his duty, to be guided in his decision by all the reflection he could take, by all the light he could gain, to the moment of his judgment. One wrong cannot help another. When Judge Hubbell put Sanderson's purse under contribution, it rested wholly in his breast to save or to ruin Sanderson.

But, if what seems the drift of the argument here were true, if Judge Hubbell's public, judicial decision of that question had been bound and concluded by his private Sunday announcement to Mr. Arnold; what then? Are not rewards bribes? To say nothing of the hope which Judge Hubbell might have gathered from the expressions of Sanderson's gratitude, from Sanderson's speculations about making him presents, is it no corruption in a judge to receive rewards for judicial acts done? Is not the hope of private reward for judicial acts, corruption in itself? Can a judge be incorrupt upon the bench, who indulges in such hopes? Is he not corrupt if he permit suitors whom his judicial decisions serve, to reward him? Mr. President, a private, pecuniary reward for judicial service done, is a bribe, as well as a private, pecuniary reward for judicial service to be done. No upright judge would take a consequent reward. No upright judge could take one. He would cease, in the act of taking it, to preserve an upright conscience. Presents for past service corrupt as well as presents for future service. All private rewards for public duty are corrupt. All private rewards for judicial duty are bribes. When Jethro advised Moses what manner of men should sit in judgment in the Mosaic Government, he tells him to "provide out of all the people, able men, such as fear God, men of truth, *hating covetousness*, and place such over them to be rulers." "And let them judge the people." *Hating covetousness*! No unessential quality in a judge; inspired wisdom guarding against a corrupt appetite for rewards. And following upon the advice of the inspired priest, we have the words of the *Most High* himself; "Thou shalt not wrest the judgment of the poor in his cause. And thou shalt take no gift, for the gift blindeth the wise and perverteth the words of the righteous." Divine words of truth! And in the spirit of that truth, the inspired wise man pictures this very case; "A wicked man taketh a gift out of the bosom, to pervert the ways of judgment." And human justice has followed divine wisdom, in the condemnation of gifts that pervert judgment. Human justice has condemned and punished the nefarious taking of gifts by judges from suitors, even *after* judgment. Lord Bacon who dealt in bribery in all its forms; who took presents from both parties; who took presents from parties and yet decided against them; dealt also in these presents after judgment. And upon all, was that great man convicted. In his confession to the House of Lords, upon which he was condemned, he discloses several cases of presents and loans after judgment. I will read from his submission. He first recites the charge and then gives his confession.

"To the first article of the charge, viz. "In the cause between Sir Rowland

Egerton and Edward Egerton, the Lord Chancellor received £300 on the part of Sir Rowland Egerton, before he had decreed the cause:'—I do confess and declare, that upon a reference from his majesty of all suits and controversies between Sir Rowland Egerton and Edward Egerton, both parties submitted themselves to my award, by recognizances reciprocal in 10,000 marks apiece. Thereupon, after divers hearings, I made my award with the advice and consent of my Lord Hobart. The award was perfected and published to the parties, which was in February. Then some days after, the £300, mentioned in the charge, were delivered unto me."

Again: "The second article of the charge, viz. 'In the same cause he received from Edward Egerton £400:'—I confess and declare, that soon after my first coming to the Seal, being a time when I was presented by many, the £400 mentioned in said charge, was delivered unto me ina purse, and as I now call to mind, from Edward Egerton; but as far as I can remember, it was expressed by them that brought it, to be for favors past and not in respect of favors to come."

Again;—"The third article of the charge, viz. 'In the cause between Hody and Hody, he received a dozen of buttons of the value of £50, about a fortnight after the cause was ended:'—I confess and declare that as it is laid in the charge about a fortnight after the cause was ended, it being a suit for a great inheritance, there were gold buttons, about the value of £50 as is mentioned in the charge, presented to me, as I remember, by Sir Thomas Perrot, and the party himself."

So of the fifth article against him:—'To the fifth article of the charge, viz. 'In Sir Thomas Monk's cause, he received from Sir Thomas Monk, by the hands of Sir Henry Holmes, £110, but this was three quarters of a year after the suit was ended:' I confess it to be true that I received 100 pieces, but it was long after the suit ended, as is contained in the charge."

And so of the seventh article against him: "To the seventh article of the charge, viz. 'In the cause between Holman and Young, he received of Young £100, after the decree made for him:'—I confess and declare, that as I remember, a good while after the cause ended, I received £100, either by Mr. Toby Mathew or from Young himself."

Again:—"To the eighth article of the charge. 'In the cause between Fisher and Wrenham, the Lord Chancellor, after the decree passed, received a suit of hangings worth £160 and better, which Fisher gave him by advice of Mr. Shute:'—I confess and declare that some time after the decree passed, I being at that time upon remove to York-house, I did receive a suit of hangings of the value, I think, mentioned in the charge, by Mr. Shute, as from Sir Edward Fisher, towards furnishing of my house as some others, that were no ways suitors, did present me with the like about that time.

So to a charge of borrowing from a suitor in his Court: "To the tenth Article of the Charge, viz., 'He borrowed of Vanlore £1000 upon his own bond at one time, and the like sum at another time upon his lordship's own bill, subscribed by Mr. Hunt, his man:'—I confess and declare, that I borrowed the money in the article set down; and that this is a true debt; and I remember well, that I wrote a letter from Kew about a twelvemonth since, to a friend, about the king, wherein I desired that whereas I owed Peter Vanlore £2000, his majesty

would be pleased to grant me so much out of his fine set upon me in the Star-chamber."

Again: "To the thirteenth Article of the charge, viz., 'He received of Mr. Worth £100, in respect of the cause between him and Sir Arthur Manwaring:' —I confess and declare, that this cause being a cause for inheritance of good value, was ended by my arbitrement and consent of parties, and so a decree passed of course; and some months after the cause was ended, the £100 mentioned in the said article, was delivered to me by my servant, Hunt."

So again of another loan from a suitor: "To the fifteenth Article of the Charge, viz., 'William Compton being to have an extent for a debt of £1200, the Lord Chancellor staid it, and wrote his letter; upon which part of the debt was paid presently, and part at a future day. The Lord Chancellor hereupon sends to borrow £500, and because Compton was to pay £400 to one Huxley, his lordship requires Huxley to forbear six months, and hereupon obtains the money from Compton. The money being unpaid, suit grows between Huxley and Compton in chancery, where his lordship decrees Compton to pay Huxley the debt, with damage and costs, when it was in his own hands:' I do declare that in my conscience the stay of the extent was just, being an extremity against a nobleman, by whom Compton could be no loser. The money was plainly borrowed of Compton upon bond with interest, and the message to Huxley was only to entreat him to give Compton a longer day, and in no sort to make me debtor or responsible to Huxley; and therefore, though I was not ready to pay Compton his money, as I would have been glad to have done, save only £100, which is paid, I could not deny justice to Huxley in as ample manner as if nothing had been between Compton and me. But if Compton has been damnified in my respect, I am to consider it to Compton."

So of another loan very like that here: "To the twentieth Article of the Charge, viz., 'That he took of Peacocke £100, without interest, security, or time of payment:' I confess and declare that I received of Mr. Peacocke £100, at Dorset-house, at my first coming to the seat, as a present; at which time no suit was begun: and at the summer after, I sent my then servant, Lester, to Mr. Rolfe, my good friend and neighbor, at St. Albans, to use his means with Mr. Peacoke, (who was accounted a monied man,) for the borrowing of £500, and after by my servant, Hatcher, for borrrwing of 500 more; which Mr. Rolfe procured, and told me at both times, it should be without interest, script or note, and that I should take my own time for payment of it."

And again: "To the twenty second Article of the charge, viz. 'In the cause of Sir Henry Ruswell he received money from Ruswell, but it is not certain how much;' I confess and declare, that I received money from my servant Hunt, as from Mr. Ruswell, in a purse; and whereas the sum in the Article is indefinite, I confess it to be 300 or £400, and it was about a month after the cause was decreed; in which decree I was assisted by two of the judges."

These, embracing a great part of the charges against Lord Bacon, are all with one exception, cases of presents after judgment; cases of bribes for judgment rendered.

I will read one more passage from the confession, in which Lord Bacon displayed something of this defendant's delicacy about receiving a gift.

"To the ninth Article of the charge, viz. 'In the cause between Kenneday and Vanlore, he received a rich cabinet from Kenneday, appraised at £800; I

confess and declare, that such a cabinet was brought to my house, though not near half the value and that I said to him that brought it, that I came to view it and not to receive it, and gave commandment that it should be carried back, and was offended when I heard it was not. And about a year and a half after, as I remember, Sir John Kenneday having all that time refused to take it away, as I am told by my servants, I was petitioned by one Pinkney, that it might be delivered to him, for that he stood engaged for the money that Sir John Kenneday paid for it; and thereupon Sir John Kenneday wrote a letter to my servant Sherborne with his own hand, desiring I would not do him that disgrace, as to return that gift back, much less to put it into a wrong hand; and so it remains yet ready to be returned to whom your Lordships shall appoint."

Here, you see, Lord Bacon went to see the gift not to take it. He refused to accept the cabinet as a gift, but suffered it to remain. Like this defendant, he repelled it as a gift; but did not hurl it from him in vindication of his integrity. It remained to his trial, like this sum of money, ready to be returned as the Court should direct.

And upon these charges the illustrious Bacon fell. "The greatest, wisest of mankind," was for these facts, "the meanest of mankind." The world lost by his condemnation. Mankind, in his degradation, saw eclipsed one of its brighest and loftiest guiding lights. But reluctant as the world was to see his fall, even his greatness could not save him from the guilt of presents received upon the judgment seat, even after judgment rendered. Even his greatness could not save him from the guilt of gifts which pervert judgment, even where his judgments were often against the givers of the gifts. Guilty as he was, Bacon was too wise to disguise his guilt. Guilty as he was, Bacon had at least the virtue to see the guilt in his own soul. With all his guilt, his perceptions of judicial purity compelled him to see and acknowledge the guilt. Confessing the facts, he could not deny the corruption, the shame. Hear what he says of the facts I have read from his confession: "Upon advised consideration of the charge, descending into my own conscience, and calling my memory to account so far as I am able, I do plainly and ingenuously confess, that I am guilty of corruption, and do renounce all defence, and put myself upon the grace and mercy of your Lordships." That was the confession of his conscience, for gifts after judgment. That was the confession wrung from his agony of guilt, by the power of conscience better than his life. There is a depth of guilt far below Bacon's. The guilt which cannot feel the sense or shame of guilt. The guilt which blusters and struts and battles in self-justification. It is here. It has no blush for these disclosures. A bribe sits lightly on the conscience of this defendant.

Great as he was, reluctant as the world was to tarnish his greatness, Bacon was condemned on *all* these charges—for the gifts after judgment, as well as for the rest. The illustrious statesman and philosopher was convicted and degraded. What is there to redeem this unrepentant taker of gifts?

And here what is the palliation offered for this gift—before or after judgment, as you will—the gift so coyly solicited—the gift which like Bacon's cabinet, the defendant could not take as a gift, but still retained—the gift, which like that, still remains for the Court to return or dispose of—the gift so elaborately and guiltily attempted to be hidden—the gift so audaciously defended and justified? Why, if not a corrupt taker of gifts, did not the defendant

cast forth, rid his conscience of the unlecan thing? What do his counsel say for him? Why, Mr. President, all that his counsel can imagine in this defence is, that at every attempt to rid himself of it, Sanderson's blundering, grateful, bull-headed, good-nature, only plunged him deeper and deeper in the mire of guilt. Who of those two was the strong man? Which was the tempter here? Which was the cool, shrewd, able villain? Which the weak, unpractised, tempted victim? As if Sanderson could not be subdued by a word or a look! If Sanderson, in his obstinate gratitude to adhere to the bribe, would not take his money back, could not this bashful, timid judge throw the shameful money down stairs after him, throw it at his head? Could he not follow Sanderson into the street and hurl the guilty money after him? What tempting devil gave such power over this defendant—who had coined and pocketed Sanderson's gratitude—to that weak, good-natured man, who almost wept, upon the stand here, for the trouble into which he was made to suppose he had got his friend by his gift? Could no persuasion make warm-hearted William Sanderson take back the money, to save his friend from ruin? Or did Sanderson know well, that he only *seemed* to wish it repaid, that he only wanted to wear the seeming of virtue, while he retained the paltry wages of sin? Had the defendant no power to repel a bribe, or is this one of the marks of that politeness which the counsel so eloquently described, which leaves him no power to repel bribes also? Has purity no power to resist corruption? Did Sanderson indeed commit a rape upon his conscience?

It is argued here, that the judgment the defendant rendered in the cause was right. We cannot tell whether it was right or whether it was wrong. It was a question of opinion, of judgment. Men usually differ about such things. It is probable they did so here. The counsel for the plaintiff in that case tells you that the judgment was right. The counsel for the defendant in that case would probably tell you that it was wrong. The question rested in the uncertain and fallible judgment of the human mind. And who can tell how this defendant viewed it? Who can penetrate his conscience? Who can tell what guilty motive prompted the judgment? We can only see the bribe followed by the judgment. But grant that the judgment was right. Cannot a man receive a gift to do a right act? Cannot a man receive a reward for a right act done? Cannot a judge be bribed to render a judgment right in itself? Who imputed to Bacon that any one of his decrees was wrong? The question of the right or the wrong of his decrees never arose on his condemnation; even he suggested but once, I think, the right of the decree, as an excuse for the gift. The guilt was in the gifts themselves. The propriety of the judgment cannot take the guilt away. And guilt itself should be ashamed to defend bribery, by setting up as a defence that it was bribery to do right!

It is said again for the defendant, that if he be a corrupt taker of bribes, here is but a solitary instance. And his counsel triumphantly asks us, why have we proved no others? And do they indeed believe that *one* bribe is no guilt? Does the defendant plead that he was guilty of mercenary corruption *but this once*, and it should be overlooked? One bribe, Mr. President, is enough to damn a far better and purer life. And when, they ask me, where are the rest? I will let Macauley answer them. I will read from the commentary of that great writer on Lord Bacon, the terrible example of the guilt of bribery through all time. I had intended to have quoted from this able essay before,

on other parts of the case. I will read some passages now, which apply more nearly on other branches of my argument.

"Mr. Montagu's other argument, namely, that Bacon, though he took *gifts*, did not take *bribes*, seems to us as futile as that which we have considered. Indeed, we might be content to leave it to be answered by the plainest man among our readers. Demosthenes noticed it with contempt more than two thousand years ago. Latimer, we have seen, treated this sophistry with similar disdain. 'Leave coloring,' said he, 'and call these things by their Christian names, bribes.' Mr. Montagu attempts, somewhat unfairly, we must say, to represent the presents which Bacon received, as similar to the perquisites which suitors paid to the members of Parliaments of France. The French magistrate had a legal right to his fee; and the amount of the fee was regulated by law. Whether this be a good mode of remunerating judges is not the question. But what analogy is there between payments of this sort and the presents which Bacon received—presents which were not sanctioned by the law, which were not made under the public eye, and of which the amount was regulated only by private bargain between the magistrate and the suitor?"

"But, says Mr. Montagu, these presents 'were made openly and with the greatest publicity.' This would, indeed, be a strong argument in favor of Bacon. But we deny the fact. In one, and only one, of the cases in which Bacon was accused of corruptly receiving gifts, does he appear to have received a gift publicly. This was in a matter depending between the Company of Apothecaries and the Company of Grocers. Bacon, in his confession, insisted strongly on the circumstance that he had on this occasion taken presents publicly, as a proof that he had not taken them corruptly. Is it not clear, that if he had taken the presents mentioned in the other charges in the same public manner, he would have dwelt on this point in answer to those charges? The fact that he insists so strongly on the publicity of one particular present, is of itself sufficient to prove that the others were not publicly taken. Why he took this present publicly and the others secretly, is evident. He on that occasion acted openly, because he was acting honestly. He was not on that occasion sitting judicially. He was called in to effect an amicable arrangement between the parties. Both were satisfied with his decision. Both joined in making him a present for his trouble. Whether it was quite delicate in a man of his rank to accept a present under such circumstances, may be questioned. But there is no ground in this case for accusing him of corruption.

"Unhappily, the very circumstances which prove him to have been innocent in this case, prove him to have been guilty on the other charges. Once, and only once, he alleges that he received a present publicly. The inference is, that in all other cases mentioned in the articles against him, he received presents secretly. When we examine the single case in which he alleges that he received a present publicly, we find that it is also the single case in which there was no gross impropriety in his receiving a present. Is it then possible to doubt his reason for not receiving other presents in as public a manner was, that he knew it was wrong to receive them?

"One argument still remains, plausible in appearance, but admitting of easy and complete refutation. The two chief complainants, Aubrey and Egerton, had both made presents to the Chancellor. But he had decided against them both. Therefore he had not received these presents as bribes. 'The complaints

of his accusers were,' says Mr. Montagu, 'not that the gratuities had, but that they had not, influenced Bacon's judgment, as he had decided against them.'

"The truth is, that it is precisely in this way that an extensive system of corruption is generally detected. A person who, by a bribe, has procured a decree in his favor, is by no means likely to come forward of his own accord as an accuser. He is content. He has his *quid pro quo*. He is not impelled either by interested or by vindictive motives to bring the transaction before the public. On the contrary, he has almost as strong motives for holding his tongue as the judge himself can have. But when a judge practises corruption, as we fear that Bacon practised it on a large scale, and has many agents looking out in different quarters for prey, it will sometimes happen that he will be bribed on both sides. It will sometimes happen that he will receive money from his suitors, who are so obviously in the wrong that he cannot in decency do any thing to serve them. Thus, he will now and then be forced to pronounce against a person from whom he has received a present; and he makes that person a deadly enemy. The hundreds who have got what they paid for, remain quiet. It is the two or three who have paid, and have nothing to show for their money, who are noisy.

"The memorable case of the Goezmans is an example of this. Beaumarchais had an important suit pending before the Parliament of Paris. M. Goezman was the judge on whom chiefly the decision depended. It was hinted to Beaumarchais that Madame Goezman might be propitiated by a present. He accordingly offered certain rouleaus of Louis-d'or to the lady, who received them graciously. There can be no doubt that, if the decision of the court had been favorable to him, these things would never have been known to the world. But he lost his cause. Almost the whole sum which he had expended in bribery, was immediately refunded; and those who had disappointed him probably thought that he would not, for the mere gratification of his malevolence, make public a transaction which was discreditable as well to himself as to them. They knew little of him. He soon taught them to curse the day in which they had dared to trifle with a man of so revengeful and turbulent a spirit, of such dauntless effrontery, and of such eminent talents for controversy and for satire. He compelled the Parliament to put a degrading stigma upon M. Goezman. He drove Madame Goezman to a convent. Till it was too late to pause, his excited passions did not suffer him to remember that he could effect their ruin only by disclosures ruinous to himself. We could give other instances, but it is needless. No person well acquainted with human nature can fail to perceive that, if the doctrine for which Mr. Montagu contends were admitted, society would be deprived of almost the only chance which it has of detecting the corrupt practices of judges."

Again Macauley says: "Will any person say that the Commons who impeached Bacon for taking presents, and the Lords who sentenced him to fine, imprisonment and degradation, for taking presents, did not know that the taking of presents was a crime? Or, will any one say that Bacon did not know what the whole House of Commons and the whole House of Lords knew! Nobody who is not prepared to maintain one of these absurd propositions can deny that Bacon committed what he knew to be a crime."

So in another passage I have marked, we find him quoting and commenting on famous old Hugh Latimer: "We could give a thousand proofs that the

opinion then entertained concerning these practices, was such as we have described. But we will content ourselves with calling a single witness, honest Hugh Latimer. His sermons, preached more than seventy years before the inquiry into Bacon's conduct, abound with the sharpest invectives against those very practices of which Bacon was guilty, and which, as Mr. Montagu seems to think, nobody ever considered as blameable till Bacon was punished for them. We could easily fill twenty pages with the homely but just and forcible rhetoric of the brave old bishop. We shall select a few passages as fair specimens, and no more than fair specimens of the rest. '*Omnes diligunt munera.* They all love bribes. Bribery is a princely kind of thieving. They will be waged by the rich, either to give sentence against the poor, or to put off the poor man's cause. This is the noble theft of princes and magistrates. They are *bribe-takers.* Now-a-days they call them *gentle rewards.* Let them leave their coloring and call them by their Christian name, *bribes.*' And again; 'Cambyses was a great emperor, such another as our master is. He had many lord deputies, lord presidents, and lieutenants under him. It is a great while ago since I read the history. It chanced he had under him in one of his dominions a *briber, a gift-taker, a gratifier* of rich men; he followed *gifts* as fast as he that followed the pudding, a hand-maker in his office to make his son a great man, as the old saying is: Happy is the child whose father goeth to the devil. The cry of the poor widow came to the emperor's ear, and caused him to flay the judge quick, and laid his skin in the chair of judgment, that all judges that should give judgment afterward should sit in the same skin. I pray God we may once see the skin in England.' 'I am sure,' says he in another sermon, 'this is *scala inferni,* the right way to hell, to be covetous, to take bribes, and pervert justice. *If a judge should ask me the way to hell,* I would show him *this way.* First, *let him be a covetous man*; let his heart be poisoned with *covetousness.* Then let him go *a little further and take bribes*; and lastly, *pervert judgment.* Lo, here is the mother, and the daughter, and the daughter's daughter. *Avarice* is the mother, *she brings forth bribe-taking,* and bribe-taking *perverting of judgment.* There lacks a fourth thing to make up the mess, which, so help me God, if I were judge, should be *hangum tuum,* a Tyburn tippet to take with him, an it were the judge of the King's Bench my Lord Chief Judge of England, yea, an it were my Lord Chancellor himself, to Tyburn with him.' We will quote but one more passage. 'He that took the silver basin and ewer for a bribe, thinketh that it will never come out. But he may now know that I know it, and I know it not alone; there be more beside me that know it. Oh briber and bribery! *He was never a good man that will so take bribes.* Nor can I believe that he that is a briber can be a good justice. It will never be merry in England till we have the skins of such. *For what needeth bribery where men do their things uprightly?*"

"This was not the language of a great philosopher who had made great discoveries in moral and political science. It was the plain talk of a plain man, who sprang from the body of the people, who sympathized strongly with their wants and their feelings, and who boldly uttered their opinions. It was on account of the fearless way in which stout-hearted, old Hugh exposed the misdeeds of men in ermine tippets, and gold collars, that the Londoners cheered him, as he walked down the Strand to preach at Whitehall, struggled for a touch of his gown, and bawled 'Have at them, father Latimer.' It is plain

from the passages which we have quoted, and from fifty others which we might quote, that, long before Bacon was born, *the accepting of presents by a judge* was known to be a wicked and shameful act; that *the fine words*, under which it was the fashion *to veil such corrupt practices*, were even then seen through by the common people; that the distinction on which Mr. Montagu insists, *between compliments and bribes*, was even then laughed at as a mere 'coloring.' There may be some oratorical exaggeration to what Latimer says about the Tyburn tippet and the sign of the judge's skin; but the fact that he ventured to use such expressions is amply sufficient to prove, that *the gift-taking judges*, the receivers of silver basins and ewers, were regarded as such pests of the commonwealth, that a venerable divine might, without any breach of Christian charity, publicly pray to God for their detection, and their condign punishment."

Mr. President, what *have* I said here, what *could* I say here, that might crowd the conviction of deep, abhorred, damnable guilt home upon this defendant, with the force of the great English essayist speaking in sore pain of the judicial sins of the great English philosopher, or with the power of the great popular preacher of his day, denouncing the sins of the great in his day? It is all a terrible commentary on this and other matters here in proof.

But we say that beyond all abstract discussion of the guilt of judicial presents, beyond all innate indecency and corruption in this transaction, there was throughout, in the hearts of both Sanderson and the defendant, a deep abiding consciousness of guilt—the homage which vice pays to virtue. How nicely, with what laborious and practised skill, was the real transaction buried in the appearance of innocence, by this defendant! How natural is the astonishment of the amiable counsel, that this transaction ever came to light! And he asks us how it was that the truth of it *did* come out? The closest guilt will be suspected. The closest guilt will leak out a very little. And investigation will sometimes succeed in tracing its secret passages. Here it has not been wholly successful, I think. Here it certainly was not easy. The truth was well covered up. How easy a story was made up for Sanderson to tell in the committee room. How easy to tell it anywhere. "During the pendency of that cause, Judge Hubbell borrowed a small sum of money from Sanderson, for a short time; but it was a mere loan; he gave his note for it and paid the note." So it was told. They say that the committee of investigation was an inquisition. How natural it was even for the Grand Inquisitor himself to drop his pen in despair, thinking upon that simple statement that in this instance at least, the bottom had fallen out of Sanderson's tub, without one leakage of guilt. But upon a closer scrutiny the leakages were found clinging in slimy guilt to the staves. The truth came out just because of Sanderson's character; a generous, good-natured, indiscreet, talkative fellow, tempted to guilt, not hardened in crime. To that character we owe the discovery. The committee did not know, the public did not know, the precise nature of the guilt. They suspected guilt and brought the witness of it to his oath. When he had told the ingenious story prepared for him, of the note and the payment, he breathed securely. But when he was pressed by the strong suspicions of guilt, he had neither the art nor the conscience to conceal the truth, which lay under the skilful statement of apparent truth, raised with such labor of guilt to conceal the real truth. We owe the

discovery to Sanderson's character and temper; not to this defendant's ingenious scheme of burying the truth under a monument of artifice representing it.

I believe that I omitted to comment, in its place, upon the interview in New York between Sanderson and Perry. You will recollect that Sanderson testifies that after his interview with Judge Hubbell here in Madison, partly on account of what was said in that interview, he felt more sanguine of succeeding in the suit than he had felt before. You will recollect that Judge Hubbell kept the case a long time under advisement and told Mr. Arnold that he had no time to look into it, until the Sunday before he gave judgment. You will recollect that notwithstanding that, Sanderson got a hint from the Judge, the very day the cause was submitted, that it would be decided as he wished. Sanderson was no old friend of the Judge. His intimacy with the Judge appears to have begun with that suit, and to have ripened rapidly. How and why, I leave to this Court. What measure of encouragement in the suit he got, or how he gos it, I cannot tell. But when he was first in New York, long before the decision of the traverse, long before the final disclosure to him of Hubbell's decision and the $200 transaction, Sanderson assured Perry of his success in the suit. He says that it was to get him out of a bad scrape, and that he was willing to pay for it. And so he suggested to Perry also the propriety of making the Judge a present, as a reward for the decision he was even then able to foretell. Even then, before the final guilt between Sanderson and the Judge, Sanderson was able to give comfort and consolation to the plaintiff in New York, and even his simple mind had penetrated deep enough into the defendant, to suggest a mercenary reward.

That finishes all we are able to learn of the secret history of that cause. That is the proof here, of the history of that cause behind the scenes. Let us look at it as it appeared to the world. I invoke this Court upon its sense of public justice, to say with all that guilty privity and covin behind the curtain, when that cause came on for trial before this man, resting for decision in his breast only, without appeal or review, or redress on earth; what a mockery of justice was played out in the sight of man and God! The defendant sat in Court upon the holy seat of judgment. There came the Comstocks, respectable merchants, filling an honorable place in society, with all at stake upon an accusation of fraud. They came to that Court with their counsel and their witness. They came to that Court, to that Judge, for the true, impartial judgment of the law. There, too, came Sanderson. Oh God! to the same court room, but seeing what different scenes. Sanderson could see it as it was. He knew all the private chambering and judicial privity which went with the Judge upon the bench. He could see the cloven foot of justice there. But the Comstocks were in the dark. They saw only the Court of the law, and the Judge of the law; they believed in the purity of human justice. They came there to throw their property and honor into the incorruptible scales of justice. They did not believe that the hand that held those scales was sullied with a bribe. They did not believe that the mind which governed the balance of justice, was festering with the hope of gifts and rewards. They did not believe that the man, who sat there to represent the intact purity of justice, had been tampering and chambering with their adversary. They believed that causes were heard only in Court, and decided only by the right. They came there to try that cause *then*, already tried in private. Holy Heaven! how guilt was mocking there at

their faith and their hope! I ask you solemnly, Mr. President, to think what a horrible mockery was the confidence of those men in the right! What a horrible mockery was the anxiety of those men, weighing fact by fact, watching proof by proof, balancing argument by argument, as that cause proceeded, in the delusion that Justice sat there doing the same! The trial and argument lasted many days. The Comstocks did not know that the Judge was prompting Sanderson's counsel to proof and argument. The Comstocks committed their cause to the holy scales of judgment. The nice balance appeared there, before man and God, trembling from side to side, unsettled and quivering. The Comstocks went home, believing in judgment; to abide judgment in suspense and anxiety. They did not know that Justice, holding that sensitive balance in one hand, grasped a bribe from their opponent with the other. They believed in human integrity. *Curia advisari vult.* Justice was deliberating. The Judge was studying the law and the fact, with midnight oil. The day of judgment came in that cause. Back to the Court came Sanderson and the Comstocks. Sanderson came there to *seem* anxious about the judgment he knew and had paid for. The Comstocks came, in suspense and trouble, to hear the judgment of the law. There stood the temple of Justice. In it, was the holy judgment seat. Upon that bench, in robes of justice seeming unpolluted, sat the defendant, to pass upon fortunes and honor of his fellow men, *with* the intact purity of soul which God has delegated to man to sit in judgment upon man. There was an impressive scene for the simple spectators. There was a scene for the whole people of the State to witness and admire; their chosen Judge, representing their sovereign power of judgment, in pure and holy chastity of mind and heart. There, to the eyes of all the world, sat this defendant, holding up between man and man the scales of incorruptible Justice.

Mr. President, God's eye was upon the sacrilege. God's eye had been upon the meeting in Madison, the beginning of so much guilt. God's eye had been on all the guilty chambering and whispering. God's eye had seen all the electric sparks of intelligence between the tampering suitor and the corrupt Judge. God's eye had seen every nod and smile of favor and corruption. God's eye had been upon the private announcement, and the venal borrowing and lending. God's eye had penetrated the guilty hearts, and their mercenary impulses and motives. To to the eye of God that scene of judgment was naked in all its damnable guilt. And the angels of God wept to see God's justice bought and sold, and mocked in sacrilegious show, upon the earth.

It is terrific to think of it. Humanity shivers at the imagination of it. I leave to the gentleman on the other side, the consolation that the judgment was right. I disdain any further answer than the truthful and brilliant aphorism on Lord Bacon:—"Bacon never sold justice, but he seldom let justice slip from his hands without extracting a bribe."

Mr. President, I have done with the details of this cause. I have gone through the facts. I have done so, no doubt, tediously to the Court; but yet rapidly as regards the evidence itself, for I have not dwelt upon half of it. I am aware that I have performed the duty very imperfectly. I commit the evidence to the Court, to supply my deficiencies.

And THIS CAUSE, which reaches every heart here; this cause, which has sunk deep into the heart of every Senator here—let his predisposition be what it may, it is not in human nature to repel such force of conviction:—this cause is

what the gentleman on the other side calls an IGNOMINIOUS FAILURE! *Lame, inadequate, unsatisfactory; the fetid spawn of malice and libel and persecution.* The Counsel canonizes the defendant's judicial career, as sanctity which has passed through the fiery ordeal and come forth redeemed and purified, illustrious and glorious to all time! And he tells us that this trial has vindicated the integrity of this Judge to those even who doubted it before. This is the case on which the Defendant heaps ridicule in his argument. He sneered at it in his plea. He mocked at it by the voice of his counsel summing up the evidence. This is the conduct of which the Defendant's conscience approves. This is the conduct in which his lenient friends can see no reproach save mere indiscretion, guiltless impropriety. And the Defendant himself stands up here, exulting in the voice of his Counsel, in the glory of his innocence and purity and chastity! He looks into this mirror of his own heart, and exults in its beauty. In the name of the Most High, who endowed all our souls with that inspiration which we call conscience, the love of truth, the love of justice, and the love of virtue, can this be the true judgment of this Defendant's heart? Is this the real tone of this man's mind? Could he not have feigned a horror of his guilt, if he did not feel it? Could he not put on an air of virtue, and exclaim against the testimony which proved such vice? Could he not say anything but that in all this he feels no wrong? Is this, indeed, his standard of morality, this his conception of judicial integrity, this the administration of justice in the Second Judicial Circuit, which he justifies, and which he asks you to justify, which he asks you to send him back to continue there? Is this the administration of justice, this the purity of judicial life, in which he has such faith, that his Counsel boldly intimated in the early stages of this cause that if your constitutional action should impeach him, his popularity might keep him Judge there in defiance of your constitutional judgment? I call upon this Court to let no weak hope interpose itself here between justice and judgment. I ask this Court, in its judgment on this cause, in its judgment upon all that has been proven here from the beginning of this trial to the end, to expect nothing from exposure, to expect nothing from shame, to expect nothing from the mere suffering of conscience of this Defendant. He professes none, he is capable of none, he will feel none. There is but one of two things for this Court to do;—to license this shameless prostitution of justice, or to end it at once and forever by its judgment. There is no other alternative. You can hope nothing here from the penitence of guilt exposed; you can expect no lesson to such a defendant from such a trial, except in the judgment. Exposure and shame have no power upon a man who sees honor in his dishonor, virtue in his vice, purity in all the uncleanness of his mind, health in his rotting corruption. Unshocked by all this array of guilt, *any* escape from justice would be a triumph to him. Honorable acquittal he cannot have, and does not hope. Any escape from judgment would send him back upon our unfortunate Circuit, exulting in the self complacency of unconvicted guilt. The parasites of corruption would cry aloud in triumph at his escape by any means.—You see it in this defence. His friends, his satellites, his conscience approve of all that is here in proof. They have not the grace to claim acquittal as a mercy; they insult the Court by claiming it as justice. They ask you to send forth this Defendant with all this load of unblushing guilt upon him, as the standard of judicial morality which this Court is to erect in this State. They say there is here no wrong,

no sin, no guilt, no impropriety, no corruption, which shocks their conscience or should reach the conscience of this Court. That is their sense, that is the defendant's sense, of a system of judicial conduct, which I dare not undertake to describe in my own language.—Shakspeare was a prophet. When he wrote his half-inspired book the race of prophets was not utterly gone. His language, bold and high wrought as it is, is literally true of the administration of justice in the Second Judicial Circuit of this State, centuries after the great Describer of the world had passed from the earth.

> "I have seen corruption boil and bubble
> Till it o'errun the stew. Laws for all faults—
> But faults so countenanced, that the strong statutes
> Stand like the forfeits in a barber's shop,
> As much in mock as mark!

And here is the well-spring of corruption before you. Here is the author the minister, the father of all this corruption, pluming himself before you pluming himself in the face of all this proof; spreading his feathers and strutting in the sight of the world, as a man without spot or stain, as a pure and immaculate judge!

Is not that enough? Man may fall into vice and be not utterly bad. But where there is no shame, there is no hope, Obliquity which cannot blush before such proofs as these, if there were no other power to reach the conscience of this Court, would shame the Court to convict this defendant.

It has been asked how has this terrible opinion grown up against the defendant? How has the soul of the second circuit come to burn with the sense of wrong, and kept on, from month to month and year to year, burning with accumulating accusation against him? Could all that growing sense of his guilt come from nothing? The gentlemen have commented largely upon his second election. These proofs establish that he was false to his duty before it. But it took time to bring the sense of his guilt home to the public heart. He himself was more guarded and cautious, then, than after. But his second election seemed like an immunity to him. Corruption grew upon him by use and immunity. *Then* he felt a power in himself which need not shrink from the boldest corruption; he felt above such responsibility as this; and for mere shame, he never knew it. If he had, he threw away all sense of shame and decency in his exultation. The result is before you. And his counsel argue now, that the bold and hardened obliquity which grew upon him since his last election, is evidence of innocence!

Dupe yourselves with no hope of him. Acquit him now; you not only acquit him, you acquit his guilt proved home upon him. You endorse not him only, you endorse his conduct proved here; you endorse his character daguerreotyped in proof before you. Acquit him now, it matters not how or for what reason; say that the Assembly have no power to impeach; say that you cannot inquire into the acts of his former term of office; say that this proof is all shameful and terrible, but yet not matter of impeachment; or let any of your number short of the constitutional two thirds, say that it is guilt the deepest and blackest ever proved; only fail to convict him, no matter how; another might die under the load of degradation and disgrace, but he will not feel it, so he escapes punishment. Fail to convict him by the quibble of a hair, and you send this man back to the bench he has polluted, exulting that he has the endorsement of the State for all his guilt, that he is free from all responsibility

now and hereafter, enfranchised from all restraint, assoiled from all shame, endorsed and ratified by the highest judgment of the political power of the State. That will be *his* construction of *any* escape here. He will return with all his vices, fat and rampant within him, to gratify all his passions through the abuse of his judicial functions, to reward his friends and to destroy his enemies; to play the same fearful pranks upon a larger and more terrible scale, before High Heaven, which is yet to judge us all for our parts here to-day. Send the defendant back to the bench. Label him an upright judge, pure, just and immaculate. Label him, your model of judicial morality. Say, in the language of his counsel, that angels came to him, and stood by him in the furnace, and rescued him and brought him forth purer and brighter from the ordeal! Let this administration of justice recommence in the second Circuit. Let it grow worse, as worse it must grow—worse from mere lapse of time, worse from custom, worse from immunity, worse from the trials of this prosecution. God help the second Circuit then. God help all in it, who have no key to this man's heart. God help all in it, who disdain to tamper with his obliquities. The suffering will be theirs but not the shame. Send him back upon us. But remember, whether or not you live to see or hear the results in the second judicial Circuit; remember that while it is possible that you may be able to blind the judgment of the world; remember that even if you succeed in duping your own consciences by this or that plausible pretence—remember that the God of Heaven is above us all. Not this Court alone, the Court of Heaven is sitting this hour in judgment upon this trial. Let this, the last and highest tribunal on this spot of earth, from any perversion of mercy, or perversion of justice, send forth this defendant and all his guilt acquitted and justified;—if the angels do indeed ever weep over the fantastic tricks played by man dressed in a little brief authority, before High Heaven—God's angels will weep before the throne and face of God, in the Court of Heaven, for the monstrous mockery played here, not only in the sight of Heaven, but in the very name of God and God's holy justice, implanted in all our hearts! I was rebuked for praying to God for the second Circuit. Mr. President, I would to God my prayers might avail. My prayers are nothing. But remember that the justice of God awaits no solicitation. Remember that it awaits us now. God's eye is upon this Senate Chamber, penetrating the secrets of every heart beating within it. Wo to those who shall pervert justice in this solemn Court!

Mr. President, the sympathies of this Court have been moved for the defendant, by the learned counsel who closed his case, as no other advocate in this State has the power to move them. I have no such power to move them. I have no such necessity to throw my cause upon them. But after witnessing the scene so ably performed here the other day, the flowing of the tears which flowed for Radcliff, the same words and the same gestures, to seduce your hearts from justice; if I thought that justice should be wept for, I—who have no tragic art, no habit of tears—remembering the wrongs of our circuit, could shed burning tears here, warm from the heart for all. More I could do Denied the right here of praying the Divine mercy, I could bend my knee as earnestly as I ever bent it when a child beside my mother, and pray to this Court to be just and true in the judgment of this cause, before God and man. I confess that your duty here is a duty full of pain, as well as of responsibility; but I invoke you to discharge it, in right and truth and justice. Give your sympathies

as men, generously and sorrowfully; but give your judgment of the truth, as members of this Court, pledged before Heaven and earth to be swayed from the truth by no sympathy. Let justice assert itself against the weakness even of pity and sympathy. Let justice stand erect here before God and man unswayed, unbent, undismayed, unseduced; above every threat which has been uttered, beyond every appeal which has been made. And when in the stern in discharge of a most painful duty, you feel that there was a touching humanity in the defendant's appeals for mercy, let this be your consolation; that while you pronounce the just judgment of God and the law upon the Judge, you can commend the man to those sacred consolations which have been paraded here by this counsel, or I should never have ventured to name them. Commend him to consolations so holy, that they will almost reach, like God's sustaining mercy, the worst evils which can fall upon man in this life. So far from being swayed from your judgment by these appeals, remember that in pronouncing the judgment of austere and inflexible justice upon the defendant, he has a refuge beyond and above your sentence. The refuge of affection. God has given us in his mercy, the affections, to make this life endurable to us. They are the consolers of the heart, the refuge of the stricken and sorrowing spirit of man. The consolations of affection adorn and sustain suffering virtue. The consolations of affection have a power to sanctify even the doom of convicted vice. And when all these moving appeals come into your minds as you are deliberating on your judgment; when you remember the affections which you have been told so often your judgment may wound; when you think of the infamy which you have been so often told your judgment will bring upon him and his; remember this too—the world is full of examples of it all about us, if we would read them—that there is a power in the very affections which have been invoked for him, to break the force of your judgment, to soften all its bitterness; a sanctity to redeemeven the infamy of conviction. And, Oh! remember this, too, then; that if these appeals have power over your hearts to sway them from the judgment of truth, you prevaricate before God and man.

It needs a strength of mind, a strength of integrity, to be just and true against the weakness of our human sympathies. Gather that strength about you. Let your souls stand up here in unsubdued and unseduced integrity. Your oaths have pledged you before God and man, on this side of the grave and beyond the grave, to the judgment of holy truth. Your judgment is no exercise of your impulses or your charities; it is the duty of truth and conscience. Here and hereafter, you have an account to render of it; not whether its consequences are light or heavy, but whether it came from your consciences, the true and holy conviction of your own souls, springing up unbiassed and unperverted in the sight of God, in humble likeness of His holy and eternal justice.

And beyond this solemn accountability, there is yet another awaiting you. There is another tribunal, where you will soon have to answer for your judgment to-day. There is a holy tribunal on this earth, which has perhaps a greater power than any other to subdue and restrain the evils of our poor, weak, erratic, human nature. The tribunal of Home. When you return to your own homes, you go to a tribunal where you must answer for the honorable discharge of your duty. When you meet your mothers, and your wives, and your children, you will be before the justest Court that man on earth can answer to: indulgent in themselves, but exacting a high standard of conscience and honor. To them

you must account for your own honor. When your venerable mothers, the chosen sharers of your hearts, the children of your love, the little grand-children prattling about your homes, meet you—they will look to welcome honorable consciences by your own firesides. They will ask you, not whether you acquitted the criminal, or convicted him, not whether public justice was vindicated or evaded, but whether you, whom they love, and lean on and revere, so acted on the clear light of your own conscience and honor, that they can meet you in pride, for you, knowing that you did your duty simply, purely and wisely, as these pure women would have done it in your place. Your fame is the best inheritance of your blood. And those pure women and children will wear affliction in their hearts, if you do not act worthily of them, and bring home from this Court to your families and posterity, the inheritance of a name made honorable by loyalty to truth, by true and honorable judgment this day given with unperverted and unseduced conscience.

In the name of the Assembly of this State, in the name of the whole people of this State, in the name of public justice, I ask you whether you are willing to say to this State, to the world, to human history in all time, that the evidence in this cause established your standard of judicial morality? Are you willing to pronounce the conduct of this defendant, exhibited in the proofs here, as above the reproach of your judgment; and to indemnify and licence him and all our judges in this State, to act in all time, as he is proved here to have acted in the past? Are you willing that the voice of this Court, the last constitutional voice of the State sovereignty, shall ratify such conduct, in the hearing of the whole world? Are you willing to say with that voice, that you, that the people of this State, look no higher for your judges? Are you willing to echo back with the constitutional voice given to you, the argument here urged, that since the elective judiciary fell upon this State, the people are corrupt, and pull their judiciary down to their own corrupt level? That this is the platform and level on which the people of the State have placed their judiciary? That the people, not the judge—that the law, not the judge, is to bear the weight of all this guilt?

Are you indeed willing? Does any false mercy, does any vicious tenderness, bend you down to this? If it be indeed so, in God's name record it as your judgment. It is a habit in many of the States to place a statue of Justice upon their court houses and capitols. It is well, Mr. President, that no such statue adorns the dome of this capitol, before the judgment in this cause shall have settled the standard of public justice in this State. If by your judgment, this defendant is to be the model of judicial integrity, his conduct your standard of judicial purity, let the statue of Justice be ordered for your capitol. But be true to your own standard. Follow no false precedents. It is the habit to represent Justice as a pure, young and beautiful maiden, chastely and modestly robed, with her eyes blind-folded, with her virgin hand holding out the pure scales of Justice suspended and poised in the open light of day before the world. That has been the sculptor's dream of Justice, sanctioned by the nations of the earth. But with a new standard, follow no old precedents. Ask your sculptor for no pure, blinded virgin, as your ideal of justice. Tell him to erect up there, upon the dome of this capitol, the marble image of a jaded, decayed, broken, unclean, diseased wanton, blinking from behind the distorted bandage put upon her eyes to dupe the scruples of mankind, and reaching forth the hand

which has dropped the sword of justice, to put the weight of avarice and lust, and every unclean passion, into the scales to bear down truth and right.

But I will not believe it. I can not believe it. I dare not believe it. The sway of the world is not yet given up to vice. Say what philosophers will of the depravity of man, the human race, with all its foibles, with all its errors, with all its wrongs, the aggregate of mankind is a noble race. There is in the vast heart of the world, a deep and abiding love of justice: a love eternal in the great human heart; a love of pure, true, incorruptible, holy justice. Through all his wanderings and derelictions, with all his faults and sins, man loves truth, loves honor, loves virtue. And mock as the East may at the West, I believe truly and firmly that the love of virtue, of truth, of honor, of justice, is as strong and deep in the hearts of this western country, as in any other country in the world. There is a greater freedom, and perhaps a greater licence in our Western civilization; but I fully believe that no civilized people on earth have a more sensitive or higher tone of conscience, than the free people of the Great West. Vindicate it now to the world, Mr. President. Let the spirit of justice which dwells in the heart and soul of the people of this State, be fairly and worthily reprefented here; deciding nothing in hate, deciding nothing in favor, deciding all in honor, as the proof shows the truth and right. I will not believe in the shameful result which has been so boldly foretold to us; which has been boasted, threatened, and denounced to us here. I will not believe that this Court will thrust aside from its conscience the sense of justice and honor and truth, which it brings here from the hearts of the people. I will not believe that this Court will take dishonor to its heart and embrace it like a wanton. I will believe, while I can, that the integrity and sense of justice of the people are in this Court. To them I appeal. On them I rely.

The Assembly of the State of Wisconsin, speaking here in my voice, rely upon the justice and integrity of this Court. They ask you to give here true and honorable judgment, Article by Article, and fact by fact. As I said in their name in the beginning, if innocence be here, dishonor no hair of the defendant's head. If guilt be here, suffer no one act of guilt to go unpunished, to disgrace the fair name of the State for all time. Article by Article, fact by fact, give true and faithful judgment. Vindicate the holy name of public justice. Purify the temple of the law. Say to this Judge at your bar: "You are unworthy to sit upon the judgment seat; you have abused, dishonored, and polluted it; you have made it the seat of passion and vice and guilt; you can no longer profane it; go forth from it."

And if you do so, I say to you, in answer to all the threats which Guilt has dared here to make to Justice, to all the tornadoes of opinion which have been threatened here against all who act in bringing corruption to the constitutional judgment of the people, that upon such a judgment there will come forth throughout the length and breadth of this State a voice of honorable approbation, the echo of the pulsations of the great, honest, pure heart of this people; not insulting fallen guilt, but vindicating the judgment of truth upon crime; consecrating in the popular heart a just judgment—a judgment vindicating the majesty of the law, the majesty of truth, the majesty of right. *That* is the true majesty of the people; the majesty of truth and justice and right and honor. And the people know it, Mr. President; and will send forth a voice of the deep, universal, incorruptible, eternal human adoration of truth and right. And

angels will register that voice in Heaven. Angels will sing before the throne of God that this justice abides still on earth; true, loyal, honorable justice, undismayed by power, unswerved by temptation, unweakened by pity, uncorrupted by sympathy; judgment on earth worthy of the true God of judgment on high, and of the true race which HE made in his own eternal and infinite image, fitly represented in this honorable Court.

But if this Court cannot reach this high level of truth and justice; if, most unhappily, this standard of truth and justice should be too high for the conscience of this Court; if this Court should be swayed from true judgment here by any motive, by any impulse, by any human weakness;—let this defendant go. Let this State bear his guilt. I told you in the beginning, and I tell you now, that guilt is here; and he or the State must bear the weight of it. Upon him or upon the State you must cast the infamy. One of them must bear it;—he by his conviction, or the State by his acquittal. Let him go. Let the proofs and the judgment go forth together to the world, go down together to posterity. The world and posterity will judge between justice and your judgment. The world and posterity will judge between the proof and your acquittal. This trial, this defendant, and this Court will go down to all posterity. This defendant with his guilt, and this Court with its judgment, will go down together to all time, sharing an immortality of shame.

Mr. President, God forbid. Mr. President, the Assembly stand at your bar for justice. They require no more; they expect no less. Their part here is done—not as it ought to have been done—not with the ability which went here to the defence; but by those to whom they entrusted it, it has been done with what ability they have. On this Court now rests the responsibility. On this Court now alone rests all there is now to be done,—the whole responsibility of the cause. The Assembly asks the Court to so discharge their duty and responsibility, that they can account for it upon the principles of eternal Justice: that they can account for it to their country and their God. The Assembly have now closed their cause: they pray your judgment.

CLOSING REMARKS OF JUDGE HUBBELL

Mr. PRESIDENT: It is the right—a right which I acknowledge—on the part of the prosecution, to close the argument in this case. My counsel in this case have made such remarks to the Court, as they deemed proper; but by a peculiar arrangement, which was without my concurrence, and contrary to what I supposed to be the rule, the prosecution was allowed their entire summing up after my counsel had closed. This induces me, nay, impels me to ask for a few moments only, the indulgence of this Senate, not to make an argument—but to make a few remarks; not to close the case, for I admit the right of the Honorable the Assembly to reply to whatever I may say. Have I, sir, that permission of this Honorable Court?

The PRESIDENT. If there are no objections, permission is granted.

SEVERAL SENATORS. *Go on!* Go on!

Judge HUBBELL. Mr. PRESIDENT: I have retained my position here, so far as more imperious duties, in another quarter, would permit me, and have listened with all the quietness and with all the decorum which I could command, to the

remarks of the gentleman who represents the Managing Committee and the Honorable the Assembly of the State. I have permitted myself, my motives, my character, my conduct, my head and heart to be assailed and impugned in all the forms which language could invent, in a manner in which no felon confined in our State prisons has ever endured, no malefactor that ever swung upon a gallows has ever deserved. I have done it, because I was conscious of my position here, because of my respect for the laws of the land, because of my homage for this Honorable Court, in whose presence I sit, with the manacles of the law upon me.

Mr. President, I have said, and I beg leave to repeat, that I have not shunned this investigation, even in the shape in which it comes. I do not shun a judgment upon the testimony in this case and upon the law. The testimony as it is delivered here, even that testimony, raked up from the mist of by-gone years, from transactions embracing the decision of thousands of cases on trial or argument—from the hurry skurry of business, pressing me from county to county and from court to court, from the midst of friends and suitors, forcing themselves and their clients into my presence whether I would or not—upon that testimony, imperfect and broken as it is, discolored and distorted as it has been, I do not shun the judgment of this Court nor the judgment of posterity.

Nor upon the law do I seek to shun judgment—the law, Mr. President, to which you are sworn, the law which has been scouted at before this Court, the law of the land, the law which this Court has sworn to obey, and which I have called God to witness that I would obey to the best of my humble ability and capacity—the constitutution of the State, that is the law—the constitution which prescribes the subject matter of impeachment—the constitution of the State which is the palladium of the liberty of the people whom the counsel represents—the constitution of the State, which is the shield and ægis of the judge upon the bench as well as the humble respondent who stands at your bar—the constitution of the State which was, when I was acting in the name and power of the people, and which is now, that I am arraigned by the people, my ægis and your ægis—in the name of the people, and by that law, I am content to be judged. But, sir, my reason, my judgment, revolts at the assumption which has been made here, in the name of the people of this State, that there is no law for this Court to pass upon, that there is no capacity in this Court to pass upon any law that the Assembly of the State, not only is the maker the law, but the judge of the law, and that this Court is, in the language of the learned prosecutor, only a "great political jury." And what, sir, is a jury? What is the humblest petit jury that ever sat in any criminal case, in our land or in England? What are the rights and what are the powers of a jury, as known to the common law? *the right and power and duty to decide upon the law and the fact*—a power which is denied here, and denied with a boldness, sir, which even Lord Mansfield himself, in the trial of the *Woodfall libel case*, did not dare to assume, on behalf of the crown of England. This "jury" is to find simply the fact, whether this or that act was committed; and somewhere else, in the Assembly of the State, in the Committee of Managers for the Assembly, or perhaps in the Counsel who acts for the Committee of Managers, resides the law, and the judgment of the law, yes, and the power of manufacturing the law that governs a case of impeachment of the highest judicial officer in the State. I admit no such law to be my criterion or your criterion of judgment.

Mr. President, the learned counsel has said mockingly, that he had no tears to shed, and has mocked at the tears which he has seen, or may have seen shed in this chair, or in these galleries. Human nature, sir, is human nature. I submit to the rebuke, but I can assure the learned counsel, that it is a gratification to me—a gratification beyond expression with my humble power of language, that while I have been sitting silently to hear his remarks, though I could recall many, very many acts of kindness which I have rendered to him; I could not recall, and he could not recall one act of unkindness or unfriendliness; not one *word* of unkindness or unfriendliness, that he has ever received from me. Yet, Mr. President, I could tell him and can tell him, when even *he* had the power of tears. It was when in my room in the American Hotel, one year ago last December, he came to me, when I was judge and chief justice of the State, to tell over the fancied wrongs committed upon him by every judge upon that bench, excepting myself and when he asked me to communicate by letter his explanation of his conduct to my brother judge sitting in yonder room. Then, sir, he had tears. That letter was put into my hands, and I put it before the judges; Judge Whiton moved to restore it to the files of the Chief Justice, and afterwards those very judges ordered it to be put into my private pocket, and to be taken from the files. Mr. President, when afterwards, that same counsel, in his own name, with his own professional responsibility and character to back him, preferred all manner of charges against the integrity of the judiciary against every one of the judges of the Supreme Court, (though he privately excepted this respondent,) the Honorable the Legislature of the State, turned those charges, backed by his name, out of doors. When, again, that gentleman had made up his mind to abandon the other judges and select the only one then excepted for attack, and when one William K. Wilson, without oath, without specification, without the statement or designation of any crime whatever, preferred charges against the respondent, to the House of Assembly, *within one hour*, a select committee was marshalled, and that committee charged to sit in secret, and to ferret out every word and act of my private, and of my public life, and bring it before the world. One of the Honorable Managers has told us how that committee conducted itself, how it was appointed and authorized to do its inquisitorial work; but one thing he has not told us. He has not told us how that secret committee, acting under their oaths, in the discharge of their duty, happened to be assisted by an out-side representative, a counsel, not a member of the Legislature, and not under oath, and by an informer too, who not under oath, and both of whom were unfriendly to me. But I leave that; I have said too much; I pass on.

You have been told, sir, that this proceeding would go down to posterity. So it will, Mr. President. So it will. There has been a movement and an agitation of the State for six months. The whole power of the State has been exercised, all the constitutional authorities of the State have been occupied. The results of their labor are before you. All the testimony on file in this case, all the speeches of the counsel, all the proceedings in the case, are to be published in a volume of thousands of pages. They are to be read by the world as they are. They are to be read by my children, and yours, and by all of posterity who choose.

Mr. President, when this poor head has done its work, when this humble form shall have gone to sleep beneath the quiet sods of the valley, where "the

wicked cease from troubling and the weary are at rest," when your children and mine walk with grey heads about this capitol, they will find in the seats of this temple of justice. men of uprightness of character, of intelligence of mind, of patriotism of heart, who, upon that testimony, despite the speech of the counsel which will travel to posterity with it, will vindicate my character, and wipe the stain from my name. And you will then find, men here, honorable men, whose voices will make the arches of this capitol ring with their own comments, with their own expressions of surprise, with their own expressions of indignation, at the spirit, which, in the name of the State, using the sovereignity of the State, has poured out the bitter personal malice, of one single bosom, upon the devoted head of the respondent. Be the result of this trial as it may, now; be my condition in the judgment of this Court as it may; whether it be true or not that the prosecution can command spirits, I tell you, Mr. President, that when this testimony and that speech, and the judgment of this Court, go forth to the world, angels will come to sit beside me, wherever I may be in this State, thick as the leaves that clothe the green forests of this our free land. The people of this State, of all parties, men and women, who have met me, who have known me, and who have experienced what I am, and know what I am, and just what I am, will, like good angels, welcome me to their hearthstones, and invite me to sit down with them, and enjoy a peace which *I never* felt in my station as Judge.

Mr. President, I am nearly done. I beg pardon of this Court. I have said too much, and said what I did not intend to say, I will speak of the testimony on one or two points only. In the Kane case, I am charged with having presided and adjudicated, contrary to the statutes of 1848 and 1850, upon a case in which I had been employed as counsel. You will bear in mind, and the Court will bear in mind, that Kane swore positively that I never was his attorney. Judge Whiton swears positively, that I never presided in that case until Kane was the sole party in it. It might well be, that, where the testimony of the prosecution and of the defence stand together so positively, no suspicion of improper motive could be raised, when there is no evidence whatever of any inducement to commit crime.

But, Mr. President, the prosecution represented, by its embodyment here, the counsel has started with one position which shocks and astonishes me more than any position I ever knew assumed in any criminal case. It is that the respondent in this case, from the beginning, when he went upon the bench and before, was filled by nature with corruption and impurity, and that every hour since, he has continued to be filled with corruption and impurity; and the testimony, which has been commented upon, and the whole prosecution conducted on this assumption—they have sought not to prove guilt, but only to show some loop, some word or action, as it were some leak hole in my nature through which this inbred, overflowing corruption, was constantly tending to run. I claim not infallibility or perfection; but I claim, and that not arrogantly, what we give to every criminal, in every case of prosecution, the presumption of good intent until a bad one his shown. I claim most sincerely and solemnly, to have acted with pure and proper motives throughout my whole judicial life and conduct. I claim it in the Sanderson case. I claim it in the Kane case. I claim it in every other case presented to this Court. I know that I am entitled to the presumption of innocence, and I know that this Honorable Court, some of

whom have been judges and magistrates, will give it to me, because the law gives it to me.

All know the law, and I know they will give it. But in the Kane case, aside from the oath of Charles I. Kane, who says that I never was his attorney, the Court will bear in mind that the suit of Howe and others against Kane and Cogswell, was commenced a year after I went upon the bench. It was a case in which Parsons and Lawrence were not parties, and the subject matter of which was in part only the same; the whole subject matter of the two, being by no means identical. In that case, after Cogswell was excluded, I did preside in the Supreme Court, and I did so with a consciousness of rectitude, with the belief based upon the statements of counsel, that if I had not presided, I would have disobeyed the law, abandoned my duty, and would have been impeachable.

The first indictment against Kane was upon an answer, in this Howe and Kane case. Kane was indicted for perjury. Judge Chandler assisted the district attorney, and drew the indictment. He knew all about my connection with the Parsons & Lawrence suit. He assisted the district attorney in the argument. He and the counsel of Kane both understood my position in the matter, both required me to sit—and both assented to my sitting by appearing there before me. I did sit, and did pass judgment upon it; but not unadvisedly, and not without consulting the Judges of the Supreme Court. And afterwards, a year afterwards, another indictment for perjury, upon the answer drawn by me, in the Parsons & Lawrence case, was presented in Court, and the same counsel appeared, and the same question was presented, so far as the defective part of that indictment was concerned. The very language, setting forth and assigning the perjury—the very same language upon which the first indictment was held to be bad, was used in the second indictment; and my passing upon it, on the demurrer, was the merest matter of form in the world. It required no argument—I had nothing to do but to stand by my own decision, in the former case. Judge Chandler and the District Attorney both assented to my making that decision; and I never dreamed, never believed that those proceedings on my part, were any otherwise than right; and if I had declined through delicacy, it would have been a mawkish delicacy. I believed also, I had not the legal power to refuse, because it was not the same cause, nor a cause between the same parties. Under these circumstances, I sinned, if I sinned at all, without knowing or intending the wrong.

One word in reference to the Hart case. Nearly five years ago, one Albert Smith, a stranger in the city of Milwaukee, unacquainted with our practice, with no clients, was invited by me, according to his own testimony, to "take a case;" to take a matter, in the fall of 1848, which in the summer of 1846, had been the subject in my hands of some legal proceedings. The law of 1848 was then new. Mr. Smith commenced a suit for divorce, in the Milwaukee Circuit Court, and had from me all the papers I had drawn, to advise him in respect to the practice. The case was given to him, as a matter of kindness and favor. Though, as he says, he was not my friend, he received that act of friendship from me. It went to the taking testimony. I suppose that at all events, was proper. There was no issue of law or of fact. The defendant did not appear. Had there been any doubt of my legal right to pass upon this evidence; had there been any covert or improper object, on my part, how easy it would

have been to pass it over, for a mere signing of the decree, to my friend, Judge Jackson, or Judge Whiton. But a month previous I had been in Judge Whiton's Court and his village, and at his request, had signed a decree in the divorce case of Frank Kimball, in which he had been talked to by the Counsel, or the parties, yet, in which he thought he had a right to act, but, to save appearances, merely, asked me to sign the decree instead of doing it himself. That was a case in which a thousand dollars was handed over by arrangment of the counsel, from the man who obtained the decree, to the wife, or into the hands of her friends and for her benefit. Yet, no wrong was done; none intended. Now, would I have signed the decree in this Hart case, if I had believed in my own heart, that I was doing wrong. If I had been the guilty man that has been charged upon me here, guilty of taking money for Hart's divorce, guilty of making profit by a violation of the statute—if I had entertained any other than an honest and an innocent purpose, would I have foregone the formality of sending it to Judge Jackson, instead of openly and frankly, signing it myself? And this coincides with the testimony of Mr. Smith himself, who swears he did not think of the statute—did not think any wrong at the time. No, it was four years afterwards, when the mousing inquisitiveness of Jason Downer, raked up its ashes and discovered its impropriety. When I had forgotten the facts, when Smith had become hostile to me. When Hart, the only witness who *could* testify to the fact that I had never been paid, as his Attorney, but merely *drew* the papers, as a volunteer, and dropt the matter, after Judge Irvin declined to act,—when Hart, I say, was in his grave, then this matter was raked up and its iniquity first discovered. Is the Judge of the second judicial circuit to be stricken from the bench, his name blasted and the State dishonored, because, in such a case as this, he did not send the papers away, for the formal action, of some other Judge? I trust not, Mr. President.

I have now done. I have detained the Honorable Court longer than I intended. I have said, Mr. President, that there has been a movement, an unusual and extraordinary movement of the official powers of this State in this case. I trust in God, that this movement, which here had its beginning, will here also have its end. I trust this experiment will be the last. When the verdict and judgment of this Court go out to the world, and when the people of this State are called upon to pay one hundred thousand dollars or more, to meet the expenses of this proceeding, I hope they will be satisfied with the judgment, and feel that this prosecution was warranted and required by stern necessity. I hope that that judgment, whether or not it be satisfactory to the parties who have moved for it; whether or not it be satisfactory to the Honorable the Assembly, or to the Honorable the Committee, who sit here for the Assembly, or to the distinguished embodiment of them all, who gloried in the opportunity to lead and speak in the name and in behalf of the State; I trust that such will be the judgment of this Court as to satisfy the consciences of the honorable men who summoned me, such as to satisfy the people, whose name has been used to sanctify this impeachment, and such as to satisfy posterity that it has been, both in its beginning and in its end, the work of public justice, and not the work of private malice or of a diseased imagination.

Judge DUNN. I wish to offer the following:

Resolved,—That this Court will meet at 3 o'clock, P. M., with closed doors,

to consult and advise of, and concerning their judgment and decision on the various articles and specifications in the impeachment herein.

Which was adopted.

Senators Alban, Blair, Hunter and Miller, voted in the negative.

The Court then adjourned.

AFTERNOON SESSION.

3 o'Clock, A. M.

The Court having been opened by proclamation, the roll was called, and all the Senators appeared in their seats.

Senator STEWART. I rise to inquire whether under the resolution to sit with closed doors it will be necessary for the reporters to retire?

Senator DUNN. My object was not to exclude those who may be considered Officers of the Court. My sole object was to settle the preliminaries as to the mode of taking the opinion of the Court upon the various Articles and Specifications, and I presume the reporters would not be an embarrassment to that proceeding. There is no necessity of any reporters leaving the Court.

I have prepared a resolution to offer to the Court, which is intended to fix the preliminaries as to the mode of taking the sense of the Court upon the Articles of Impeachment which have been preferred.

Resolved,—That the President of the Senate shall take the opinion of the Court on each article of impeachment in connection with the several specifications thereunder, separately, and if there is no specification, then on the article separately, in the form following:

Mr. Senator—how say you? Is the respondent, Levi Hubbell, guilty or not guilty of corrupt conduct in office, or of crime or misdemeanor, as charged in the first article of the impeachment herein.

Second form as above to "first," then vary the form in this wise, "second article of impeachment and first specification thereunder," proceeding through all the specifications under the article, with distinct questions on each specification connected with the article, until the opinion of the Court is taken upon all the articles and specifications in the Impeachment, varying the questions to suit the different articles and specifications.

That after the opinion of the Court is ascertained as provided in this resolution, the President of the Senate shall announce the decision of the Court upon the article and specification in the Impeachment.

That before the President proceeds to take the opinion of the members of the Court, as directed in this resolution, the articles of Impeachment shall be read to the Court by the Chief Clerk of the Senate.

I have framed the question to meet the constitutional provisions, which, it will be recollected by the Court, provides that this officer may be impeached for corrupt conduct in office, or for crimes and misdemeanors, and I have framed it so as to meet the entire ground of the constitution.

The Clerk read the resolution again.

Judge DUNN continued. I have added that clause to the resolution, because I see it is the practice pursued in the Senate of the United States. It

is high authority, and I suppose we cannot do better than to adopt the rules and forms there adopted.

Senator CARY. I would inquire whether the word "*and*" between the words "crimes and misdemeanors," should not be "*or*."

Senator DUNN. I conformed to the language of the constitution, which provides that this officer may be impeached for corrupt conduct in office, or for crimes and misdemeanors.

Senator CARY. I would suggest that there is such a thing as a misdemeanor without its being a crime.

Senator DUNN. I presume, in one sense, every crime is a misdemeanor, and every misdemeanor a crime, and I thought it safe to use the language of the constitution.

The resolution was now adopted.

Senator DUNN. I was about to offer the usual resolution which precedes occasions of this kind. Perhaps, however, I ought to pause to hear the views of the Court, if they have any views to offer, or any discussion preliminary to taking the vote.

A pause—no remarks.

The Hon. Senator continued. The resolution I propose to offer is as follows:

Resolved,—That the Senate will at half-past 4 o'clock, P. M., proceed *further* with the trial of the Articles of Impeachment exhibited by the Assembly against Levi Hubbell, Judge of the Second Judicial Circuit of this State, with open doors, and that the Clerk inform the Assembly thereof, and that the Sergeant-at-Arms inform the respondent.

At that time it is usual for the Managers and the respondent to attend, if they think proper, to hear the opinion of the Court.

The resolution was adopted.

Senator HUNTER. If there is nothing further before the Court, I move to take a recess until twenty-five minutes after 4 o'clock.

Which motion was agreed to.

Half-past 4, P. M.

Senator STEWART moved to reconsider the resolution prescribing the form of voting. He knew it was the usual form of proceeding, but there never before was an impeachment involving such a vast amount of charges, and ow the saving of time was an important consideration; and for that purpose he wished to amend and simplify the resolution.

The motion was carried.

Senator DUNN. If the Senators, upon consultation, think they can facilitate the proceeding, it will be satisfactory to me. I, too, am desirous of proceeding as rapidly as possible. The amendment proposed will relieve the presiding Officers and the Senators from rising so many times in their places.

The motion to amend was carried, and then the resolution as amended was adopted.

The roll was then called, and all the Senators appeared in their seats.

And the hour having arrived for taking the opinion of the Court upon the Articles of Impeachment and the Specifications thereof,

The Chief Clerk was directed to inform the Assembly.

The Sergeant-at-Arms was directed to inform the respondent.

The Assembly, by its Committee of Managers, appeared within the bar of the Senate.

The respondent, attended by Mr. Knowlton, one of his counsel, also attended.

The Clerk then read Article 1, of the Articles of Impeachment, as follows:

That he, the said Levi Hubbell, being Judge of the Second Judicial Circuit of this State, in the year 1852, while a certain cause wherein one Theodore Perry, survivor of Beville Shumway, was plaintiff, and Cicero Comstock, Leander Comstock, Reuben Chase and William Sanderson, were defendants, was pending in the Circuit Court of Milwaukee county, before him, the said Levi Hubbell, as Judge of the said Court, did, contrary to his duty and obligations as such Judge, permit the said William Sanderson, who was one of the defendants, and was interested and desirous that the said plaintiff should succeed in maintaining his said case, and recover therein, to consult and advise with him, the said Levi Hubbell, on the subject matter and proceedings of said cause, and did, contrary to his said duty and obligations, consult and advise with the said William Sanderson in relation thereto; and that afterwards, in the month of June in the same year, while he, the said Levi Hubbell, was holding under advisement, for his consideration and judgment, a certain issue of fact in the said cause, then lately tried before and submitted to him, pursuant to law and the practice of the said Court, he, the said Levi Hubbell, did, privately and partially, and contrary to his said duty and obligations, reveal to the said William Sanderson that he, the said Levi Hubbell, would decide the said issue of fact in favor of the said plaintiff, and thereupon, afterwards, and before he, the said Levi Hubbell, as such Judge, had decided upon the said issue, he, the said Levi Hubbell, did solicit and borrow from the said William Sanderson the sum of two hundred dollars, which sum the said William Sanderson, intending the same as a gift, thereupon paid to him the said Levi Hubbell, taking no voucher, and making no agreement for the repayment thereof, and charging the same in account to the said plaintiff, with the knowledge of the said plaintiff; and that, within two days thereafter, he, the said Levi Hubbell, did decide the said issue of fact in favor of the said plaintiff; and that the said sum of money so remained unpaid and unsecured by him, the said Levi Hubbell, and intended and regarded by the said William Sanderson as a gift, for a long time, and until after the said Levi Hubbell and William Sanderson were advised that the said Levi Hubbell was threatened with prosecution before the constitutional tribunal, for receiving the said sum of money as a bribe, when he, the said Levi Hubbell gave, and he, the said William Sanderson received a due bill for the said sum of money, which he, the said Levi Hubbell, afterwards, and during the present session of the Legislature of this State, pretended collusively with the said William Sanderson, to pay to him, the said William Sanderson, but which said sum of money was not received by the said William Sanderson, but was by him left with the said Levi Hubbell, after the surrender by the said William Sanderson, to the said Levi Hubbell, of the said due bill, and so remains as a gift from the said William Sanderson, or the said plaintiff, in the hands or to the use of him, the said Levi Hubbell, to the manifest corruption and scandal of the administration of justice.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the first article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were

Messrs. Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, Stewart, Vittum and Wakeley.—10.

Those who answered "not guilty" were

Messrs. Bashford, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling, Whittlesey and Weil.—14.

Article II. and specification 1, were then read as follows:

That the said Levi Hubbell, so being Judge of the Second Judicial Circuit, has presided and adjudicated as such Judge in the Circuit Courts of this State, in causes wherein he, the said Levi Hubbell, was pecuniarily interested, contrary to the statute in such case made and provided, and to the manifest corruption and scandal of the administration of justice.

Specification 1.—That he, the said Levi Hubbell, having purchased from one Jonathan Taylor a certain judgment, previously rendered in the Circuit Court of Racine county, in favor of the said Jonathan Taylor, against the city of Milwaukee, and having procured the same to be assigned to one Levi Blossom, for the use and benefit of him, the said Levi Hubbell; and the said Levi Blossom, having filed in the Circuit Court of Milwaukee county, his certain bill in Chancery, commonly called a creditor's bill, founded upon the said judgment, and to enforce the payment of the said judgment against the said city, and having thereupon obtained a writ of injunction out of the said Circuit Court of Milwaukee county, restraining the said city and the treasurer thereof, amongst other things, from paying out any monies belonging to the said city; and the said city having, by its counsel, made a motion in the Circuit Court of Milwaukee county, to dissolve the said injunction, he, the said Levi Hubbell, Judge as aforesaid, being pecuniarily interested in the premises, did on the 12th day of February, 1852, contrary to law and justice, and his duty in the premises, preside in the said Circuit Court of Milwaukee county, on the hearing of the said motion, and as Judge of the said Court, did decide the said motion, and refuse the same.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the responpent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the first specification of article two of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were

Messrs. Hunter, McLane, Miller, Prentice, Stewart, Vittum, Whittlesey and Weil.—8.

Those who answered "not guilty" were

Messrs. Alban, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling and Wakeley.—15.

Specification 2 of Article II., was then read as follows:

SPECIFICATION 2.—That he, the said Levi Hubbell, being the owner of a certain promissory note of one Joseph O. Humble, did cause a suit to be instituted in the Circuit Court of Milwaukee county, wherein he, the said Levi Hubbell, was the presiding Judge, for the collection of the said promissory note, for the use and benefit of him, the said Levi Hubbell, in the name of one Wallace W. Graham, as plaintiff, against the said Joseph O. Humble, and that he, the said Levi Hubbell, judge as aforesaid, being pecuniarily interested in the premises, did, on the 26th day of May, 1849, contrary to law and justice, and his duty in the premises, preside in the said court, in the said cause, and render judgment therein against the said Joseph O. Humble, and in favor of the said Wallace W. Graham.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article two of the impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, Miller, Prentice and Vittum.—6.

Those who answered "not guilty" were,

Messrs. Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Stewart, Sterling Wakeley, Whittlesey and Weil.—18.

Specification 3, of Article II., were then read as follows:

SPECIFICATION 3.—That after the rendition of the judgment in the last foregoing specification mentioned, and a writ of *fieri facias* had issued thereon, and certain real estate of the said Joseph O. Humble had been sold to satisfy the same, and been purchased by one Henry P. Hubbell, for the use and benefit of him, the said Levi Hubbell; one William Y. Miller having filed his certain bill in Chancery, in the Circuit Court of Milwaukee county, against the said Joseph O. Humble, the said Wallace W. Graham, and others, to foreclose a mortgage on the said real estate, and having obtained thereupon a decree of foreclosure and sale of the said real estate, and the said real estate having been, upon such last mentioned sale, again purchased by the said Henry P. Hubbell, for the use and benefit of him, the said Levi Hubbell; he, the said Levi Hubbell, being pecuniarily interested in the premises, did, at February term of the said court, 1851, as judge of the said court, make an order of the said court, confirming such last mentioned sale, and did, at a special April term of the said court, 1851, make an order of the said court directing the surplus monies arising from such last mentioned sale, to be paid to the said Henry P. Hubbell, as the purchaser of the said real estate.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of

corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification of article two of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, Miller, Prentice and Vittum.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—18.

Article III. was then read as follows:

That one James M. Haney having been indicted and convicted in the Circuit Court of Dane county, before the said Levi Hubbell as judge thereof, for an assault made by him, the said James M. Haney, being armed with a dangerous weapon, to wit, a loaded pistol, upon one Thomas Ashland, with intent to murder the said Thomas Ashland; he, the said Levi Hubbell, did, as such judge, on the 25th day of April, in the year 1851, wilfully, arbitrarily, partially and illegally, and contrary to the statute in such case made and provided, and his duty in the premises, sentence the said James M. Haney for the said crime, to pay a fine of two hundred dollars and costs, and to stand committed until the same should be paid, and to no other or different punishment.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Miller.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Article IV. and Specification 1, were then read as follows:

That he, the said Levi Hubbell, so being Judge of the Second Judicial Circuit, has presided and adjudicated, as such judge, in the Circuit and Supreme Courts of this State, in causes in the subject matter whereof, he, the said Levi Hubbell, had been retained and counselled with as an attorney, solicitor and counsellor, by parties to such causes, (and had acted as attorney, solicitor and counsellor for such parties,) contrary to the statute in such case made and provided, and to the manifest corruption and scandal of the administration of justice.

Specification 1.—That he, the said Levi Hubbell, at the December term, 1851, and the June term, 1852, of the Supreme Court of this State, did contrary to law and justice, and his duty in the premises, preside and adjudicate as one of the judges of the said Supreme Court, in a certain cause in chancery, pending by appeal in the said Supreme Court, wherein one Calvin W. Howe, and others, were complainants, and one Charles I. Kane, who had been im-

pleaded with one George Cogwell, as defendant, and did, as one of the judges of the said court give his vote and influence in favor of the said Charles I. Kane, in the said cause; he, the said Levi Hubbell, having been the attorney, solicitor and counsel of the said Charles I. Kane, in the subject matter of the said cause, and in a former cause against the said Charles I. Kane and George Cogswell, growing out of and involving the same facts.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth article and specification two of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, McLane, Miller, Prentice and Vittum.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—17.

Specification 2, of Article IV., was then read as follows:

Specification 2.—That he, the said Levi Hubbell, having, as Judge of the Circuit Court of Dane county, made a final decree in favor of William S. Hungerford, in a certain cause in chancery therein pending, wherein the said William S. Hungerford was complainant, and Caleb Cushing was defendant; and while the said cause was pending on an appeal of the said Caleb Cushing from the said decree to the Supreme Court of this State, he, the said Levi Hubbell, was, contrary to his duty and obligations as such judge, retained, and did act as counsel for the said William S. Hungerford, upon a certain indictment for perjury, preferred against the said William S. Hungerford, in the District Court of the United States for the district of Wisconsin, growing out of the same controversy, and involving, in part, the same conclusions of fact and law as the said cause in chancery; and that afterwards, at the December term, 1851, and the June and December terms, 1852, of the said Supreme Court, he, the said Levi Hubbell, did, contrary to law and justice, and his duty in the premises, preside and adjudicate as one of the judges of the said Supreme Court, in the said appeal of the said cause in chancery, and did, as one of the judges of the said court, give his vote and influence in the said cause, in favor of the said William S. Hungerford.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this second specification of article four of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, Stewart, Vittum, Wakeley, Whittlesey and Weil.—12.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton and Sterling.—12.

Specification 3, of Article IV., was then read as follows:

Specification 3.—That he, the said Levi Hubbell, having been retained by one William L. Hart to obtain for him, the said William L. Hart, a divorce from his wife, Eliza A. Hart, who had never been within this State or the United States, and having made application for such divorce to the Hon. David Irvin, Judge of the Second Judicial District of the Territory of Wisconsin, in the District Court for the county of Rock, in the said Territory, which application had been refused by the said David Irvin, for want of jurisdiction of the courts of said Territory to entertain the same; he, the said Levi Hubbell, did, contrary to his duty and obligation as such judge, cause one Albert Smith, an attorney and counsellor, to be employed by the said William L. Hart, to apply for such divorce in the Circuit Court of Milwaukee county, before him, the said Levi Hubbell, as judge thereof, which was accordingly done; did entertain such cause in the said Circuit Court, as judge thereof; did testify as a witness therein, to certain things by him done during and growing out of his said retainer by the said William L. Hart; and did, contrary to law and justice, and his duty in the premises, preside in the said Circuit Court, on the hearing of the said divorce suit of the said William L. Hart against his wife, the said Eliza A. Hart, and did improvidently and improperly make a decree of the said Circuit Court, granting such divorce.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, of a crime or misdemeanor, as charged in this the third specification of article four of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, McLane, Prentice, Stewart and Vittum.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Miller, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil.—17.

Specification 4, of Article IV., was then read as follows:

Specification 4.—That he, the said Levi Hubbell, having been consulted and retained on behalf of one Andrew Smith, in relation to a certain claim of the said Andrew Smith, against the Milwaukee Mutual Insurance Company, and the said Andrew Smith having instituted his suit against the said Insurance Company, in the Circuit Court of Milwaukee county; he, the said Levi Hubbell, did at the February term of said court, 1850, contrary to law and justice, and his duty in the premises, preside at the trial of the said cause, as judge of the said Circuit Court.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth specification of article four of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 5, of Article IV., was then read as follows:

SPECIFICATION 5.—That he, the said Levi Hubbell, at the May term, 1851, of the Circuit Court of Milwaukee county, did, contrary to law and justice, and his duty in the premises, preside and adjudicate, as judge of the said court, upon a demurrer of one Charles I. Kane, to a certain indictment therein pending, against the said Charles I. Kane, for the crime of perjury, and did sustain the said demurrer, and give judgment upon the said indictment in favor of the said Charles I. Kane; he, the said Levi Hubbell, having been and acted as the attorney and counsel of the said Charles I. Kane, on the subject matter out of which the said indictment arose.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifth specification of article four of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were

Messrs. Allen, Bowen, Hunter, McLane, Miller, Prentice and Vittum.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil. —17.

Specification 6, of Article IV., was then read as follows:

SPECIFICATION 6.—That he, the said Levi Hubbell, at the May term, 1852, of the Circuit Court of Milwaukee county, did, contrary to law and justice, and his duty in the premises, preside and adjudicate as judge of the said court, upon a demurrer of one Charles I. Kane, to a certain other indictment therein pending, against the said Charles I. Kane, for the crime of perjury, and did sustain the said demurrer, and give judgment upon the said indictment in favor of the said Charles I. Kane; he, the said Levi Hubbell, having been and acted as the attorney and counsel of the said Charles I. Kane, on the subject matter out of which the said indictment arose, and having drawn the sworn answer in chancery of the said Charles I. Kane, upon which perjury was assigned in and by the said indictment.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth specification of article four of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, McLane, Miller, Prentice and Vittum.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—17.

Article V., and Specification 1, were then read as follows:

That he, the said Levi Hubbell, being judge of the Second Judicial Circuit, has, contrary to the statute in such case made and provided, and his duty and obligations as such judge, taken and used monies paid into the Circuit Courts of the said Circuit, in the progress of suits therein, to the manifest scandal and danger of the administration of justice.

Specification 1.—That he, the said Levi Hubbell, having, as judge of the Circuit Court of Milwaukee county, ordered the sale, as of perishable property, of certain goods and chattels attached in a certain attachment cause, wherein James McBride, Henry McBride and Henry K. Sheldon, were plaintiffs; and Cicero Comstock and Leander Comstock, William Sanderson and Reuben Chase, were defendants; then pending in the said Circuit Court, and the same having been so sold, and he, the said Levi Hubbell having, as such judge, ordered the nett proceeds of such sale to be paid into said court; he, the said Levi Hubbell did, on the 14th day of August, 1852, contrary to law and propriety, and his duty in the premises, take from the sheriff of Milwaukee county, and use for his own benefit, the sum of five hundred and sixty-five dollars and seventy-four cents, being the amount returned by the said sheriff as the nett proceeds of the said sale, and did keep and use the same until after the final determination of the said cause.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in the fifth article and first specification of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 2, Article V., was then read as follows:

Specification 2.—That he, the said Levi Hubbell, having, as judge of the Circuit court of Dane county, in a certain cause in chancery therein pending, wherein Levi B. Vilas and Ezra L. Varney, were complainants, and R. J. Lansing, Robert W. Lansing, Charles H. Rogers, Henry Corwith, and Nathan Corwith, were defendants; ordered a certain amount of money, therein in controversy, to be paid into the said court, and thereupon the sum of two hundred and sixteen dollars and ninety-six cents was so paid in to the clerk of said court; he, the said Levi Hubbell, did, on the 23d day of April, 1852, contrary to law and propriety, and his duty in the premises, take from the said clerk, and use for his own benefit, the sum of two hundred and fifteen dollars, being part of the amount so paid into court, and did keep and use the same until after the final determination of the said cause.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article five of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty," were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 3, of Article V., was then read as follows:

SPECIFICATION 3.—That he, the said Levi Hubbell, having as judge of the Circuit Court of Milwaukee county, at the January term, 1850, thereof, sentenced certain persons convicted of misdemeanors in the said court, to wit: Samuel Gardiner, Rufus King, William J. A. Fuller and William E. Cramer, to pay certain fines, did, contrary to law and his duty in the premises, take and receive, and for a long time keep, and use, to his own use, the monies by them paid for such fines.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the responent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification of article five of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Article VI., and Specification 1, were then read as follows:

That he, the said Levi Hubbell, so being judge of the Second Judicial Circuit, has improperly and collusively given judicial advice, and made judicial promises, to suitors and persons likely to become suitors in the courts of this State, on the subject matter of their suits, contrary to law, and his duty as such judge, and to the manifest scandal and partiality of the administration of justice.

SPECIFICATION 1.—That while a certain cause in chancery, instituted by the Attorney General, on behalf of this State, against the Wisconsin Marine and Fire Insurance Company, and one Alexander Mitchell, the Secretary thereof, was pending in the Circuit Court of Washington county, wherein the said Attorney General had applied to the said Circuit Court for a writ of injunction against the defendant therein; he, the said Levi Hubbell, did, contrary to his duty and obligations as said judge, confer with the said Alexander Mitchell on the subject of the said cause, and advised the said Alexander Mitchell to obey any injunction in the said cause, if such should be issued by the said Circuit

Court, and promised the said Alexander Mitchell, that if such injunction should be issued by the said Circuit Court, he, the said Levi Hubbell, as judge of the Second Judicial Circuit, would dissolve the same.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth article and first specification of impeachment, will answer "*guilty*" as your names are called, and those of a contrary opinion will answer "**not guilty.**"

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Miller, Prentice, Stewart and Vittum.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil.—18.

Specification 2, of Article VI., was then read as follows:

SPECIFICATION 2.—That a certain judgment having been recovered in the Circuit Court of Milwaukee county, by John Lowery and Archibald Lowery, against James P. Greves and Abel W. Wright, he, the said Levi Hubbell, being Judge of the said Circuit Court, did, contrary to his duty and obligations as such judge, listen to the complaints and statements of the said James P. Greves, in relation thereto, and did express to the said James P. Greves an opinion that the said judgment was scandalously obtained, and did advise the said James P. Greves to make a motion to vacate the said judgment in the said court, before him, the said Levi Hubbell, as judge thereof, which the same James P. Greves, on such advice, accordingly did.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article six of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "**not guilty.**"

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 3. of Article VI., was then read as follows:

SPECIFICATION 3.—That one Burr S. Craft being desirous of obtaining a divorce from his wife, he, the said Levi Hubbell, did, contrary to judicial propriety and duty, permit and solicit one Andrew E. Elmore, the friend and agent of the said Burr S. Craft, to relate to him, the said Levi Hubbell, the grounds and facts on which said Burr S. Craft sought such divorce, and thereupon did, contrary to his duty and obligations as such judge, advise the said Andrew E. Elmore that such grounds and facts were sufficient to obtain such divorce, and did advise the said Andrew E. Elmore, on behalf of the said Burr S. Craft, to apply for such divorce; and a bill or petition for such divorce

having been, upon such advice, filed on behalf of the said Burr S. Craft, in the Circuit Court of Waukesha county; the said Levi Hubbell did, contrary to his duty and obligations as a judge, permit the said Andrew E. Elmore to exhibit in private to him, the said Levi Hubbell, the evidence taken in support of such divorce, for the purpose of taking his, the said Levi Hubbell's, opinion on the sufficiency of such evidence, and did, thereupon, privately advise the said Andrew E. Elmore, that such evidence was sufficient for that purpose; and did afterwards, as judge of the said Circuit Court, make a decree of the said court granting such divorce; and did afterwards solicit a present from the said Burr S. Craft, through the said Andrew E. Elmore

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification of article six of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty were,"

Messrs. Allen, Blair, Bowen, Hunter, Miller, Prentice and Stewart.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Sterling, Vittum, Wakeley, Whittlesey and Weil. —18.

Article VII., and Specification 1, were read as follows:

That the said Levi Hubbell, so being judge of the Second Judicial Circuit, has, in the exercise of his judicial functions, conducted himself with undue and unjust partiality and favor to particular suitors in the courts of the said Circuit before him, contrary to his duty and obligations as such judge, and to the manifest corruption and scandal of the administration of justice.

Specification 1.—That the said Levi Hubbell being applied to, as judge of the Milwaukee Circuit Court to hold a special term of said court, for the purpose of confirming a sale made in a certain foreclosure cause in chancery, pending in the said court, wherein John F. Baasen was complainant, and John Anderson and others were defendants, and having agreed to hold such special term for such purpose; afterwards, contrary to his duty and obligations as such judge, did partially, and from his personal feeling of enmity, refuse to hold the same for the benefit of one Byron Kilbourn, because the said Byron Kilbourn was his, the said Levi Hubbell's opponent; and afterwards, contrary to his duty and obligation as such judge, did partially, and of his personal favor, agree to hold the same for the benefit of one Amos Sawyer, because the said Amos Sawyer was his, the said Levi Hubbell's friend.

When the President took the opinions of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this seventh article and first specification of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice and Stewart.—8.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling, Vittum, Wakeley, Whittlesey and Weil.—16.

Specification 2, of Article VII., was then read as follows:

SPECIFICATION 2.—That while an indictment was depending in the Circuit Court of Waukesha county, against one William H. Howe, for the crime of perjury, he, the said Levi Hubbell, had, contrary to public decency, and against his duty and obligations as such judge, a private and indecent interview with the wife of the said William H. Howe, sought by her to solicit, and wherein she did solicit him, on behalf of her said husband, in the matter of said indictment; and did afterwards, as judge of the said court, bring about the acquittal of the said William H. Howe of the crime charged by the said indictment.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article seven of impeachment, will answer "*guilty*" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Vittum.

Those who answered "guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—23.

Specification 3, of Article VII., was then read as follows:

SPECIFICATION 3.—That he, the said Levi Hubbell, judge as aforesaid, knowing that one Eliza C. Wyman, the wife of one William W. Wyman, was living apart from her said husband, and was desirous of obtaining a divorce from him, had, contrary to public decency and his duty and obligations as a judge, a private and indecent interview with her, and in such interview did counsel and advise with her in relation to such divorce; and that he, the said Levi Hubbell, did afterwards permit the said William W. Wyman, who was also solicitous to obtain a divorce from his said wife, to exhibit affidavits to him in support of such divorce, and did thereupon advise the said William W. Wyman that such affidavits did not establish grounds for a divorce, but that he, the said William W. Wyman, could accomplish his end by permitting his said wife to obtain such divorce; to which said William W. Wyman assented, informing him, the said Levi Hubbell, that he, the said William W. Wyman, would suffer his wife to obtain such divorce; and that afterwards he, the said Levi Hubbell, well knowing such collusion between the said William W. Wyman and his said wife, did, as judge of the Circuit Court of Jefferson county, by collusion and favor, and contrary to law and justice, and without justifiable cause, and against his duty and obligations, make a decree of the said court granting a divorce against the said William W. Wyman, in favor of his said wife.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification of article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24,

Specification 4, of Article VII., was then read as follows:

SPECIFICATION 4.—That in a certain cause in the Circuit Court of Waukesha county, wherein Robert Barker was plaintiff, and George C. Pratt was defendant, he, the said Levi Hubbell, as judge of said court, did, by collusion and favor, contrary to law and justice, without justifiable cause, and against his duty and obligations as such judge, make an order of the said court to stay, until the further order of the said court, any writ of execution on a certain judgment rendered in the said cause, in favor of the said plaintiff, and against the said defendant, because it was inconvenient and difficult for the said defendant then to pay such judgment.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth specification of Article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Hunter.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 5, of Article VII., was then read as follows:

SPECIFICATION 5.—The same as the third specification to the sixth charge.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifth specification of article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Hunter, Miller and Prentice.—5.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—19.

Specification 6, of Article VII., was then read as follows:

SPECIFICATION 6.—The same as the first specification to the sixth charge.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth specification of article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Miller, Prentice and Stewart.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Sterling, Vittum, Wakeley, Whittlesey and Weil.—18.

Specification 7, of Article VII., was then read as follows:

SPECIFICATION 7.—That the said Levi Hubbell, on the trial in the Circuit Court of Milwaukee county, of a certain cause wherein Ira A. Hopkins was plaintiff, and Horatio N. Stevens was defendant; did, at the May term of the said court, 1851, contrary to his duty and obligations as such judge, partially and unfairly attempt to prevent the counsel for the said plaintiff from adhering to an admission of fact made by such counsel, and from making the same.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the seventh Specification of Article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 8, of Article VII., was then read as follows:

SPECIFICATION 8.—That he, the said Levi Hubbell, as judge of the Circuit Court of Dane county, insisted upon hearing a certain cause in chancery pending in the said court, wherein William S. Hungerford was complainant, and Caleb Cushing was defendant, at a special term of the said court, to be held by him for that purpose, and arbitrarily and partially refused the counsel of the said defendant adequate time for the argument of said cause.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eighth specification of article seven of impeachment, will answer "guilty"

as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, McLane, Miller, Prentice, Stewart and Vittum.—8.

Those who answered "not guilty" were

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil.—16.

Specification 9, of Article VII., was then read as follows:

SPECIFICATION 9.—That the said Levi Hubbell, judge as aforesaid, knowing that one Eliza Wyman, the wife of one William W. Wyman, was living apart from her said husband, and was desirous of obtaining a divorce from him, had, contrary to public decency, and his duty and obligations as a judge, a private and indecent interview with her, and in such interview did counsel and advise with her in relation to such divorce; and that he, the said Levi Hubbell, did afterwards permit the said William W. Wyman, who was also solicitous to obtain a divorce from his said wife, to exhibit affidavits to him in support of such divorce, and did thereupon advise the said William W. Wyman that such affidavits did not establish grounds for a divorce, but that he, the said William W. Wyman, could accomplish his end by permitting his said wife to obtain such divorce; to which the said William W. Wyman assented, informing him, the said Levi Hubbell, that he, the said William W. Wyman, would suffer his wife to obtain such divorce; and that afterwards he, the said Levi Hubbell, well knowing such collusion between the said William W. Wyman and his said wife, did, as judge of the Circuit Court of Milwaukee county, by collusion and favor, and contrary to law and justice, and without justifiable cause, and against his duty and obligations, make a decree of the said court granting a divorce against the said William W. Wyman in favor of his said wife.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the ninth specification of article seven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Miller and Vittum.—4.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—20.

Article VIII., and Specification 1, were then read as follows:

That he, the said Levi Hubbell, so being judge of the Second Judicial Circuit, has used his judicial station and influence for the purpose of inducing females to submit themselves to be debauched by him, contrary to public

decency, and to the manifest corruption and scandal of the administration of justice.

SPECIFICATION 1.—In the case of Mrs. Howe, set forth in the second specification to the seventh charge.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eighth article and first specification of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll being called,

Those who answered "guilty" were

Mr. Vittum.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—23.

Specification, 2 of Article VIII., was then read as follows:

SPECIFICATION 2.—In the case of Mrs. Wyman, set forth in the *third* specification to the seventh charge.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article eight of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 3, of Article VIII., was then read as follows:

SPECIFICATION 3.—In the case of Mrs. J. Van Bergen, in relation to the settlement of the estate of her late husband, William Van Bergen.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification of article eight of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn,

Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 4, of Article VIII., was then read as follows:

SPECIFICATION 4.—In the case of Mrs. Sarah Pope, in relation to her application for a divorce from her husband to the Circuit Court of Milwaukee county.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth specification of article eight of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll being called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Articles IX., and Specification 1, were then read as follows:

That the said Levi Hubbell, so being judge of the Second Judicial Circuit, has arbitrarily and oppressively exercised the functions of his judicial office of his own mere will, and out of favor or enmity, to the oppression of suitors, and the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—By ordering a new trial without sufficient cause, and without argument heard by him in court, in the case of George Trentledge, against the Milwaukee and Mississippi Railroad Company, in the Milwaukee Circuit Court.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the first specification to the ninth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen and Bowen.—2.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—22.

Specification 2, of Article IX., was then read, as follows:

SPECIFICATION 2.—By refusing adequate time for the argument by counsel of the cause of William S. Hungerford against Caleb Cushing, in the Circuit Court of Dane county.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification to the ninth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion, will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, McLane, Miller, Prentice, Stewart and Vittum.—8.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil.—16.

Specification 3, to Article IX., was then read, as follows:

SPECIFICATION 3.—By staying execution without sufficient cause in the case of Robert Barker against George C. Pratt, in the Circuit Court of Waukesha county.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification to the ninth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Hunter.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 4 to Article IX., was then read, as follows:

SPECIFICATION 4.—By exacting the excessive and unreasonable penalty of ten thousand dollars, in an appeal bond on an interlocutory appeal by the defendant to the Supreme Court, in the case of William S. Hungerford against Caleb Cushing, in the Circuit Court of Dane county.

When the President took the opinion of the members of the Court, in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth Specification to the ninth Article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Miller.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey, and Weil.—23.

Specification 5 to Article IX was then read, as follows:

SPECIFICATION 5.—By quashing the indictment in the case of the State against John Lane and Gilbert Lane, without proper cause, in the Circuit Court of Jefferson county, after having previously refused to quash the same.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifth Specification to the ninth Article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 6 to Article IX was then read as follows:

SPECIFICATION 6.—By himself giving notice to the complainant's counsel of a motion to dissolve the injunction in the case of Michael McGrath against William Cook, in the Circuit Court of Milwaukee county, and forcing such motion to a hearing, and deciding the same against the complainant without reasonable cause, and without any such motion having been made or noticed by the defendant in the cause, and after having previously refused, in the same state of the said cause, to dissolve the said injunction.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth Specification to the ninth Article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Article X., and Specification 1, were then read, as follows:

That he, the said Levi Hubbell, so being Judge of the Second Judicial Circuit, has, contrary to his duty and obligations as such Judge, allowed himself to be improperly approached, consulted, advised with, and influenced, out of court, on the subject of suits and proceedings instituted, or about to be instituted, in the Circuit Courts of the said circuit, by suitors, their friends and agents, to the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—The same as the third specification to the eighth charge.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the

first specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 2, to Article X., was then read, as follows:

SPECIFICATION 2.—In the case of George Trentledge against the Milwaukee and Mississippi Railroad Company, in the Circuit Court of Milwaukee county, by James Kneeland.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification to the tenth article of impeachment, will answer "guilty," as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Bowen.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 3, to Article X., was then read as follows:

SPECIFICATION 3.—In the case of John Lowery and Archibald Lowery against James P. Greves and Abel W. Wright, in the Circuit Court of Milwaukee county, by James P. Greves.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the third specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 4, to Article X., was then read, as follows:

SPECIFICATION 4.—In the case of Isaac N. Janes against Samuel B. Humphrey, in the circuit court of Milwaukee county, by Mrs. Julia N. Janes.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 5, to Article X., was then read, as follows:

SPECIFICATION 5.—In the case of Peter G. Jones against Horatio N. Davis, in the circuit court of Waukesha county, by A. F. Pratt and William A. Barstow.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifth specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allan, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 6, to Article X. was then read, as follows:

SPECIFICATION 6.—In the case of George F. Pratt against —— Cleveland, in the circuit court of Waukesha county, by A. F. Pratt.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 7, to Article X., was then read, as follows:

SPECIFICATION 7.—In the case of Luther Ayer against George C. Pratt, in the circuit court of Milwaukee county, by A. F. Pratt.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the seventh specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 8, to Article X., was then read as follows:

SPECIFICATION 8.—In the case of the State against William H. Howe, in the Circuit Court of Waukesha county, by Mrs. Howe.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eighth specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Vittum.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Wakeley, Whittlesey and Weil.—23.

Specification 9, to Article X., was then read as follows:

SPECIFICATION 9.—In divers cases, the titles whereof are unknown, by William A. Barstow.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the ninth specification to the tenth article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Blair.—1.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 10, of Article X., was then read, as follows:

SPECIFICATION 10.—In the case of William A. Barstow, administrator of Josiah Barber, against Horatio N. Wall, in the Circuit Court of Waukesha county, by William A. Barstow.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the tenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty," were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 11, of Article X., was then read as follows:

SPECIFICATION 11.—In the case of the State against John L. Doran, in the Circuit Court of Milwaukee county, by John L. Doran.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eleventh specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty,"

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 12, of Article X., was then read, as follows:

SPECIFICATION 12.—In the divorce case of Mrs. Sarah Pope, in the Circuit Court of Milwaukee county, by Mrs. Sarah Pope.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the twelfth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 13, of Article X., was then read, as follows:

SPECIFICATION 13.—In the case of the Board of Supervisors of Milwaukee county, against Sylvester W. Dunbar, George D. Dousman and others, in the Circuit Court of Milwaukee county, by George D. Dousman.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the thirteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen. Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 14, of Article X., was then read, as follows:

SPECIFICATION 14.—In the case of the State against Jehial Smith, in the Circuit Court of Milwaukee county, by Peter G. Jones and others.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty were,"

Mr. Blair.—1.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 15, to Article X., was then read, as follows:

SPECIFICATION 15.—In the divorce case of Burr S. Craft against —— Craft, his wife, in the Circuit Court of Waukesha county, by Andrew E. Elmore.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Hunter, Miller, and Prentice.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—18.

Specification 16, of Article X., was then read, as follows:

SPECIFICATION 16.—In the case of Reuben D. Turner, prosecuted in the

Waukesha Circuit Court for seduction, by Reuben D. Turner and Charles A. Keeler.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Mr. Blair.—1.

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—23.

Specification 17, of Article X., was then read, as follows:

SPECIFICATION 17.—In the case of the State against James M. Haney, in the Circuit Court of Dane County, by George P. Thompson.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the seventeenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Blair and Miller.—2.

Those who answered "not guilty" were

Messrs. Alban, Allen, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—22.

Specification 18, of Article X., was then read, as follows:

SPECIFICATION 18.—In the divorce case of William W. Wyman, against Eliza C. Wyman, his wife, in the Circuit Court of Jefferson county, by both parties to the suit.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eighteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 19, of Article X., was then read, as follows:

SPECIFICATION 19.—In the case of the State against John Lane and Gilbert

Lane, in the Circuit Court of Jefferson county, by Jonathan E. Arnold, the defendant's attorney.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the nineteenth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered not "guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 20, of Article X., was then read, as follows:

SPECIFICATION 20.—In the case of Theodore Perry, survivor of Bevile Shumway, against Cicero Comstock, Leander Comstock, Reuben Chase and William Sanderson, in the Circuit Court of Milwaukee county, by William Sanderson.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the twentieth specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, Stewart and Vittum.—9.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil.—15.

Specification 21, of Article X., was then read, as follows:

SPECIFICATION 21.—In the case of Lemuel White against J. H. Martin, in the Circuit Court of Waukesha county, by Calvert C. White.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the twenty-first specification of article ten of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn,

Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Article XI., and Specification 1, was then read, as follows:

That the said Levi Hubbell, so being Judge of the Second Judicial Circuit, has, contrary to his duty and obligations as such judge, officiously interfered and intermeddled with, and advised upon the subject matter of suits instituted, or about to be instituted, in the Circuit and Supreme Courts of this State, with suitors, their friends or agents, to the manifest scandal and danger of the administration of justice.

SPECIFICATION 1.—In the case of George Trentledge against the Milwaukee and Mississippi Railroad Company, in the Circuit Court of Milwaukee county, with James Kneeland.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the first specification of the eleventh article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 2, of Article XI., was then read, as follows:

SPECIFICATION 2.—With Mrs. Jane Van Bergen, in relation to the settlement of the estate of her deceased husband.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the second specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty"

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 3, of Article XI., was then read, as follows:

SPECIFICATION 3.—In the case of John Lowery and Archibald Lowery against James P. Greves and Abel W. Wright, in the Circuit Court of Milwaukee county, with James P. Greves.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the

third specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty"

Those who answered "not guilty" were

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 4, of Article XI., was then read, as follows:

SPECIFICATION 4.—In the case of James Kneeland against the city of Milwaukee, in the Circuit Court of Milwaukee county, with Asahel Finch, junior.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fourth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 5, of Article XI., was then read, as follows:

SPECIFICATION 5.—In the case of the Attorney General against the Wisconsin Marine and Fire Insurance Company, in the Circuit Court of Washington county, with Alexander Mitchell.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the fifth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Miller and Prentice—5.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—19.

Specification 6, of Article XI., was then read, as follows:

SPECIFICATION 6.—In the case of William A. Barstow, Administrator of Josiah Barber, against Horatio N. Wall, in the Circuit Court of Waukesha county, with William A. Barstow.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the sixth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 7, of Article XI., was then read, as follows:

SPECIFICATION 7.—In the case of Mason Converse against Peter Rogan, in the Circuit Court of Milwaukee county, with Peter Rogan.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the seventh specification to the eleventh article of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen and Blair.—2.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bowen, Bovee, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—22.

Specification 8, of Article XI., was then read, as follows:

SPECIFICATION 8.—In the case of James McBride and Joseph Lord against Russell Wheeler, in the Circuit Court of Milwaukee county, with Francis Randall, Plaintiff's attorney.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eighth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 9, of Article XI., was then read, as follows:

SPECIFICATION 9.—In the case of John C. Treadwell, and others, against

Charles C. Richards, in the Circuit Court of Milwaukee county, by improperly entering the jury room alone, and then discharging the jury privately.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the ninth specification to article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen and Blair.—2.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—22.

Specification 10, to Article XI., was then read, as follows:

SPECIFICATION 10.—In the case of the State against Jehial Smith, in the Circuit Court of Milwaukee county, with A. Cook, prosecuting attorney.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the tenth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered "not guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

Specification 11, of Article XI., was then read as follows:

SPECIFICATION 11.—In the divorce case of Burr S. Craft, against ——— Craft, his wife, in the Circuit Court of Waukesha county, with Andrew E. Elmore.

When the President took the opinion of the members of the Court in the orm following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the eleventh specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Blair, Bowen, Hunter, Miller, Prentice and Stewart.—7.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Pinckney, Reed, Smith, Seaton, Sterling, Vittum, Wakeley, Whittlesey and Weil.—17.

Specification 12, of Article XI., was then read, as follows:

SPECIFICATION 12.—In the case of William L. Hart, against Eliza A. Hart, in the Circuit Court of Milwaukee county, with Albert Smith.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the twelfth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, Prentice, Stewart and Vittum.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Miller, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil. —18.

Specification 13, of Article XI., was then read, as follows:

SPECIFICATION 13.—In the matter of an application to the said Levi Hubbell, for an injunction against the Milwaukee and Mississippi Railroad Company, with James Kneeland, a director of said company.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the thirteenth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered not "guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

On calling the roll for the vote upon the first Article, when the Clerk came to the name of Senator Allen, he answered "guilty," and added "of corrupt conduct in office."

When the voting was concluded Senator Allen said: I understand that every one who voted "guilty" would be at liberty to qualify his vote. I did so on my first vote. I wish to have my vote qualified throughout as "guilty only of corrupt conduct," and not of "crimes and misdemeanors."

Senator CARY. I suppose a matter of that kind can only be explained by a statement such as the Senator has now made.

The PRESIDENT. The resolution provides that the President of the Senate shall announce the decision of the Court. I do therefore announce that Levi Hubbell, Judge of the Second Judicial Circuit, is hereby declared by this

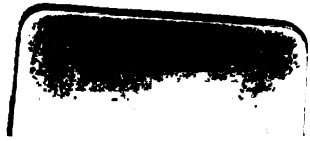
Court NOT GUILTY of the charges of corrupt conduct in office, nor of crimes and misdemeanors, as charged in the Articles and Specifications exhibited against him by the Assembly of the State of Wisconsin.

Senator ALBAN. I move that this Court do now adjourn *sine die*. Carried.

The PRESIDENT. This Court is adjourned without day.

ERRATUM.

Page 800, line 27, for "guilty," read "not guilty."



Specification 12, of Article XI., was then read, as follows:

SPECIFICATION 12.—In the case of William L. Hart, against Eliza A. Hart, in the Circuit Court of Milwaukee county, with Albert Smith.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the twelfth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

Those who answered "guilty" were,

Messrs. Allen, Bowen, Hunter, Prentice, Stewart and Vittum.—6.

Those who answered "not guilty" were,

Messrs. Alban, Bashford, Blair, Bovee, Briggs, Cary, Dunn, Lewis, McLane, Miller, Pinckney, Reed, Smith, Seaton, Sterling, Wakeley, Whittlesey and Weil. —18.

Specificcation 13, of Article XI., was then read, as follows:

SPECIFICATION 13.—In the matter of an application to the said Levi Hubbell, for an injunction against the Milwaukee and Mississippi Railroad Company, with James Kneeland, a director of said company.

When the President took the opinion of the members of the Court in the form following:

Senators! as many of you as believe the respondent, Levi Hubbell, guilty of corrupt conduct in office, or of a crime or misdemeanor, as charged in this the thirteenth specification of article eleven of impeachment, will answer "guilty" as your names are called, and those of a contrary opinion will answer "not guilty."

And the roll having been called,

None answered "guilty."

Those who answered not "guilty" were,

Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pinckney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakeley, Whittlesey and Weil.—24.

On calling the roll for the vote upon the first Article, when the Clerk came to the name of Senator Allen, he answered "guilty," and added "of corrupt conduct in office."

When the voting was concluded Senator Allen said: I understand that every one who voted "guilty" would be at liberty to qualify his vote. I did so on my first vote. I wish to have my vote qualified throughout as "guilty only of corrupt conduct," and not of "crimes and misdemeanors."

Senator CARY. I suppose a matter of that kind can only be explained by a statement such as the Senator has now made.

The PRESIDENT. The resolution provides that the President of the Senate shall announce the decision of the Court. I do therefore announce that Levi Hubbell, Judge of the Second Judicial Circuit, is hereby declared by this